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EMERGING PROBLEMS IN PUBLIC ADMINISTRATION*

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Thoughtful men cannot long be associated with government without beginning to ask questions, both as to the technique of administration and the underlying policies with which these techniques must reckon. It is good, therefore, that those in the government service who are most interested in public administration should meet from time to time with the professors and publicists who also are interested. I wish to do my part, therefore, in helping in the baptismal ceremonies for this new society which has in it so much promise. To the non-governmental members of the society I wish to pass on the observation which my father made when he came as Secretary of Agriculture to Washington in 1921. Leaving Iowa, he shared to some extent the widespread public opinion that government servants are both clock-watchers and chair-warmers. Within a few months he had completely changed his ideas and told me that he would like to bring some government men back with him into business because they were so exceedingly clear-thinking and efficient.

While we in the United States have not as yet so completely recognized public service as a career as they have in England or France, and while there is undoubtedly great room for improvement, I am nevertheless convinced that nowhere in the world will you find a better group of earnest, hard-working, efficient men and women than those who are engaged in American public service, whether it be on the local or the national level. Of course, by taking thought they can improve their service, and that, I take it, is the object of this organization.

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In discussing briefly the emerging problems of public administration, I shall confine myself for the most part to the interest which the Federal public servant has in the shifts of policy as they will almost inevitably develop from clearly discernible world-wide forces. Before passing on to problems of policy, I would like, however, to make a brief mention of the necessity for improved techniques. Government, of course, is largely a bureaucracy which for the most part must follow the customary channels. Most administrators can keep in contact directly, effectively, and continuously, with not more than twenty men. If an administrator is to initiate effectively throughout an organization of thousands of men the impulses which are necessary to meet a new situation, he must do so for the most part through his staff or through the "generals" in his army. Only rarely and by the accident of a special situation can he come in effective contact with the captains, the lieutenants, or the privates in the army. Of course at times the special interests of an administrator will lead him to do a certain amount of "spot checking" among the captains and the privates, but it is physically impossible, as well as bad administration, to go so very far in this direction. It is only rarely that a $1,620 clerk is warranted in approaching a bureau chief directly. It is only rarely that the bureau chief is warranted in approaching the $1,620 clerk directly. A bureau chief is called in only rarely by the President. It is not often that a bureau chief feels he has the privilege of approaching the President directly. "Do your work, and send it through regular channels" seems to be the never-ending cry in government.

In this way, according to government people, efficiency is attained and trouble is avoided. In the main they are correct, but in order to prevent government from running to seed as a bureaucracy, it is necessary that there be efficient staffs to cut across regular bureaucratic channels in an effort to make sure that the bureaucratic work coördinates with the need for broader policy.

One of the chief sources of inefficiency in Washington is the failure to develop for the higher executives sufficiently strong staffs to bring about genuine coördination of the bureaus in the service of broad policy. Contrary to popular impression, the bureaus as a rule are genuinely efficient. But oftentimes they are somewhat lacking in the comprehension of their relationship to matters of broad policy. It is here that the staff arm of a department or an office can render unusual service.

It is only recently that the colleges of the country have begun consciously to train men for staff positions. Thus far, most of the best staff-men in the Federal government have come from within the government itself. Some of the best men I know of had very little formal training beyond high school. I have had some experience with young men who have been formally trained and am much impressed with them. They see clearly, work energetically, and about all they need is the wisdom which comes from experience. I hope, however, the day will never come when the bulk of staff positions are filled by the bright young men from the colleges. The superior men of suitable temperament and background who have long been in government service should also have a chance at staff positions. May we never have a situation where the staff positions of our government are largely filled by men who have formed a mutual admiration society because they came from one institution or small group of institutions! There is no one set of ideas on governmental procedure which will furnish the everlasting answer. Some of the best administrators I know have had no formal training in governmental procedure except that learned from actual experience. Some of the best college men in government service have come from very small colleges. For instance, the late F. A. Silcox, who was one of the finest public servants this government has ever had, was graduated from an institution in South Carolina of which few people have ever heard.

In a large sense, the qualities of a good staff man, as well as a good administrator, come from his personal life experience as much as from his education. His task is to work with people, for all administration is concerned with decisions and actions by human beings—not with mechanical routines. The staff work of conveying broad policy means acceptance of the human traits of the people involved and the direction of those traits toward their most effective use for the ends of broad policy. A staff man must above all be sensitive to people. He must like human beings. This trait comes from life and not from schooling.

But a staff-man must also have breadth of knowledge and understanding. Here I think schooling is important. To understand broad policy, a man must know the social and economic trends that require the policy. He must be acquainted with historical backgrounds and be able to place himself in the line of trends. A good perspective is to be as devoutly encouraged in administration

as in drawing. A good staff-man must be able to analyze present events in terms of their future implications. In short, he should apply his knowledge realistically to the understanding of things as they are and to how policy should be shaped to adjust to reality. Perhaps this is the real job of any social observer. Certainly it is the job of the staff-man.

One other problem of technique I should like to mention before getting into the question of broad policy. This has to do particularly with the relationship between the Federal government in Washington on the one hand and the state and local governments on the other. The relationship which for many years has existed between the Department of Agriculture, the land grant colleges, and the county agents is a good illustration. In recent years, Congress has placed in the Department of Agriculture responsibility for a number of action agencies which reach down into the county. It has therefore been necessary to work out a coördinated relationship between these action agencies in the county. In brief, let it be said that we are endeavoring to work out both a horizontal and perpendicular relationship in the field and in Washington. I am convinced that some of the most useful staff-men of the future will be those specializing on federal-state relationships. A really good man in this field has a value above rubies. He must have in him the utmost of perseverance, good nature, *backbone*, ingenuity, and wisdom. Such men must be both born and made. We have a few of them in the Department, and I cherish them.

Leaving now the field of technique in relationship to the states, I should like to discuss the problem of some of the recently emerged or emerging policies with which every staff-man, every state's relations man, every bureau chief, and every division head should be familiar. If the $3,000-a-year men and beginners at the bottom rungs of the ladder can also be aware of these policies, so much the better.

First and foremost as a cause of policy shift, I would list the fact that we no longer have a land frontier. When the land frontier passed away, our rate of population growth rapidly slowed down. We began to think less about exploitation and more about conservation. It was no accident that the last big strip of land opened for homestead entry was occupied at about the same time that Theodore Roosevelt, inspired by Horace Plunkett and Gifford Pinchot, launched his great drive to make the nation conservation-

conscious. As long as we had a land frontier, we could tolerate a certain amount of soil exploitation and human exploitation.

Today our land frontier is gone and our population frontier is nearly gone. Twenty years hence, we shall have twice as many people above the age of sixty-five as we have today. But at the same time we shall have fewer young people under twenty. After 1960, our population may begin slowly to decline unless in the meantime we have been successful in furnishing new frontiers to take the place of the vanished land frontiers.

Rural electricity and paved roads provide the escape from the monopolistic rackets in many cities, and will result inevitably in a considerable degree of decentralization. The fear of airplane attacks may to some extent reinforce this tendency over large sections of the world, including even the United States. An increasing percentage of the population is beginning to hunger for the open country, provided they can have the conveniences of rural electricity and paved roads. While many cities will doubtless continue to grow in population, others will decline. Such cities will be in danger of building too many public services such as school houses and streets and will fall into bankruptcy. It will take real courage to be mayor of a city with expensive habits whose population is either declining or moving outside of the taxation zone. Those responsible for Federal policy having to do with housing and public works projects will of necessity have to consider where our population can eventually be located most fruitfully. Certain types of activity like automobile and steel manufacture will never be greatly decentralized except at the cost of a reduced standard of living.

Second as a cause of policy shifts is the fact that we changed from a debtor to a creditor nation during the period from 1914 to 1920. During the entire decade of the twenties we loaned more and more money to foreign nations, with the result that at the peak of the late twenties we were net creditors to the extent of more than twenty billion dollars. Obviously, the interest on this debt could be paid only in goods, gold, services, or by the acceptance of new notes. Throughout the decade of the twenties, the United States refused steadily to recognize this situation. Instead of lowering tariffs, we raised them. This made it certain that the foreign nations would either default or have to ask for extension of time in meeting their obligations. If the Federal government had been adequately

staffed with men who understood the trend of the times in relation to Federal policy, and if these men had had a vital relationship with the states, it might have been possible to avoid producing the situation which brought on Hitler and the present world agony.

Since 1933, we have lowered our tariffs mildly under the reciprocal trade agreements and have contributed to foreign purchasing power by buying enormous quantities of gold. Not yet, however, have we taken in their entirety the necessary policy steps to recognize the full significance of our position as a creditor nation. There is danger that we shall find this situation aggravated when the present war comes to an end, unless we are prepared to invest the proceeds of our creditor position in those friendly and near-by countries from which we are willing to receive goods, and where the governments are sufficiently friendly so that under a sensible economic policy on the part of the United States there will be no danger of expropriation. Too many people have unjustifiably given Latin America a black eye as a financial risk. In the twenties, we loaned many of these nations too much money on a thoughtless basis, without regard to their productive facilities and our willingness to accept the output of those productive facilities. I would be hopeful in the future that we would be prepared to loan money to those friendly tropical Latin American countries which would be willing to develop on an efficient basis a rubber industry. I mention this merely by way of illustration.

In any event, it is clear that we must either give up our creditor position after long years of suffering, or we must use it in such a way as to increase the productivity of those nations to which we are willing to loan and from which we are willing to receive goods. Inevitably, policies will emerge with respect to this problem year after year during the next ten years. If we insist on a high-tariff policy, many of the foreign loans will go into default. To loan abroad skillfully, and to take a genuine position of financial leadership in both Latin America and Canada, will require legislation, education, and a great deal of energy and skill in a field where hitherto our efforts have been rather bungling. We can do the job and do it well, but it will take time to develop the skill.

Without in any way violating the good neighbor policy, I would like to suggest that Latin America has in it the most outstanding possibilities I know to furnish the substitute for the land frontier which disappeared early in this century. I am expecting great

things from the blending of American and Iberian culture if we will only set to work resolutely to understand the Spanish and Portuguese languages and the proper methods of coöperation in the scientific conservation and development of the resources of tropical Latin America. One of our most challenging frontiers lies ahead of us.

A third cause of policy shift is technological change. One hundred fifty years ago, it required nineteen people living on the land to support themselves and one person in town. Today, under greatly commercialized and industrialized conditions, one person on the land supports himself, three people in town, and contributes to the support of another person overseas. Today, in a somewhat unbalanced way, under the whip of a war stimulus, our city industries are turning out somewhat more than they did in 1929, but unemployment is several times as great as in 1929 because of the increased efficiency of city industries. With full use of mechanical power, we can produce our present supplies of farm products with five million fewer people living on the land, and our present supplies of city products with twenty million fewer people living in the cities. With matters as they are, the seven million breadwinners among the twenty-five million people with marginal opportunities are earning not more than ten to fifteen cents an hour per hour of employable time. Most of these people are anxious to work, and if given an ordinarily decent opportunity could turn out several times as much per hour as is now the case.

Of course, no one can approach the problem of unemployment without being deeply concerned with investment, which adds another problem of administration. Every year in the United States at its present stage of development there must be invested probably seven to eight billion dollars more in durable goods than our corporations are now likely to invest in a good year, if unemployment is to be avoided. This additional money can come, as it did in the decade of the twenties, from the investing public, or it can come, as it did in the decade of the thirties, from increased investment by government. It should be pointed out, however, that the increased government investment did not average nearly as much during the decade of the thirties as the flow of private money in the twenties. The flow of government money in the thirties was in fact not enough to offset the decline in private debt liquidation. During the decade of the thirties, government money flowed in an amount

equal to less than half of the amount represented in the decade of the twenties by private debt or direct capital investment.

There is great difference of opinion as to what it takes to restore the courage of "venture capital." Some say the world must quiet down first. Others say that change in taxation structure will do the job. For my own part, I am inclined to think that if the Latin American frontier is skillfully developed, and if internal opportunities and needs are recognized and met, they will serve the purpose in considerable measure.

It is essential to recognize in our policy-making that we are a mature nation. In a mature nation approaching a stationary population, land values no longer advance at their former rapid rate. The emphasis on producers' goods somewhat declines, and the emphasis on consumers' goods increases. Unless there is peril from abroad, there is a very human tendency to emulate a certain rich man in the Scriptures who said: "Soul, thou hast much goods laid up for many years; take thine ease, eat, drink, and be merry."

One of the outstanding problems in a mature economy is a tendency of the organized to prey on the unorganized, and for the unorganized to retaliate under demagogic leadership in such a way as to destroy economic efficiency. The great unorganized groups of the United States are the smaller farmers, the majority of laboring men, and small business men. Following the Great War, the farmers lost steadily in bargaining power to the other organized groups, and there is an instinctive tendency on the part of many other groups in society to gang up against the farmers. At the present moment, for example, there is widespread belief that the farmer is profiteering. And yet the wholesale price of farm products the second week in December was below the 1909–14 average, and eleven per cent below the 1934–38 average. Moreover, the pay-rolls of labor would buy about twenty-six per cent more food this fall than they would in 1929. The average farmer who before the World War had about sixty per cent as great an income as the non-farm person today has less than one-half as much income per capita as the non-farm population. In saying this, I am counting as a part of the farmer's income the living which he gets off the farm, as well as the soil conservation and parity payments. The superior bargaining power of organized groups in the cities inevitably takes great toll from the farmers and the unorganized people in the cities.

It is essential to recognize this situation for what it is, because when people who have been treated unjustly rise up in their wrath, wise action is not always taken. Jefferson, 152 years ago, writing to Madison from Paris, recognized the problem of a mature civilization when he said: "When we become piled upon one another in large cities, as in Europe, we will go to eating one another as they do there." Jefferson, feeling this way, was later on told by Hamilton: "Your people, sir, is a great beast." Somehow I cannot help thinking that on that occasion Jefferson must have said to himself: "Yes, there is great truth in this statement of Hamilton, and it is my purpose to take into account the truth of this statement and to forestall Hamilton's fears by proper emphasis on education and agriculture."

One of the great functions of the higher government official in a mature civilization is to understand this battle which goes on steadily between the better-educated, over-privileged groups and those who are more poorly educated and under-privileged. The problem of the government servant is in some way to turn this battle between the "haves" and the "have nots" into a constructive service for the general welfare. Neither side can be allowed to jeopardize the general welfare.

It is essential in a mature consumer-goods economy to pay much more attention to the problem of the under-privileged than in a young rapidly-expanding economy where the under-privileged can easily move to the frontier and find new jobs if they do not like the situation in the old settled parts of the country.

With regard to the under-privileged in a mature economy, George W. Russell, otherwise known as "A.E.," offered the following:

> Can we, by any device, draw this submerged humanity into the light and make them real partners in the social order, not partners merely in the political life of the nation, but, what is of more importance, in its economic life? If we build our civilization without integrating labor into its economic structure, it will wreck that civilization, and it will do that more swiftly today than two thousand years ago, because there is no longer the disparity of culture between high and low which existed in past centuries. . . . Men no more will be content under rulers of industry they do not elect themselves than they were under political rulers claiming their obedience in the name of God. They will not for long labor in industries where they have no power to fix the conditions of their employment, as they were not content with a political system which allowed them no power to control legislation. . . . These workers must be the

central figures, and how their material, intellectual, and spiritual needs are met must be the test of value of the social order we evolve.

In a mature nation, government inevitably plays a more direct part than in a young nation. Government becomes greatly concerned about both exploited humanity and exploited natural resources. In the United States, this concern is expressed first by Congress. Social security and soil conservation acts are passed. It then becomes the job of the executive branch of the government to put these laws into practice. It is found after years of experience that amendments are required. This means that there must be developed a more perfect technique of coöperation between the executive and legislative branches.

It is especially important to develop a more complete understanding of fiscal policy on the part of both branches. Even more important is it to develop a much more complete understanding on the part of investment bankers of the problems of a mature civilization. Key people in the Congress and in the business world should be kept continually informed as to the developing problems of the so-called action agencies which have to do with the conservation of our humanity and the conservation of our natural resources.

Undoubtedly one of the most permanent of the emerging problems of public administration has to do with the kind of job we shall face when the present war comes to an end. Our long-time trend is to withdraw somewhat from Europe. In the late nineties, Europe took nearly eighty per cent of our exports. In recent years, she has taken only about forty per cent. Undoubtedly for many a long year to come Europe will continue to be our leading source of imports and our leading customer for exports. Undoubtedly we shall sympathize greatly with Europe in her post-war situation, and shall endeavor to help her as much as we can without peril to ourselves. But at the same time, as I said before, we must recognize that our destiny lies increasingly in this hemisphere, and in so far as we are able to make plans for the investment of funds, we can well consider laying increasing emphasis on Canada, Latin America, and possibly Australia. When this war comes to an end, we must see whether we can avoid the mistakes we made during the decade of the twenties. We must see to what extent we can avoid again setting up trade barriers in such a way as to encourage a fresh batch of dictators.

As I sense it, there is going to be an ever-increasing interest in problems of improved nutrition. The experiments with vitamins and white rats are having a mighty effect. The so-called protective foods, rich in vitamins, minerals, and high-quality protein, are growing in favor by leaps and bounds. More and more, we are coming to the idea that everyone is entitled to a health-protecting diet. The food stamp plan of the Department of Agriculture is an outstanding recognition of this need.

Time does not permit any more detailed listing of the trends which are certain to have a profound effect on emerging administrative policy. I should like to turn back now to a more specific consideration of management in public affairs. Anyone who has had the experience of being a cabinet officer cannot help being astonished at the extraordinary powers of the machine which he directs. The loyalty of his staff and his bureau chiefs is amazing. But their willingness to carry out his expressed interest is sometimes a little disturbing. Sometimes I ask for a certain set of figures without putting in sufficient qualification, and as a result the wheels start grinding and within a few days I get a fifty-page memorandum when I desired only a reply by telephone. A few experiences of this sort make a person exceedingly hesitant before pressing the buttons of such a high-powered machine unnecessarily.

In every governmental department there are many thousand people working under the Secretary and his associates. If the Secretary should in a moment of vain-glory become so proud as to lose his sense of proportion, the havoc created among the workers would become gravely disturbing to the country. It requires a democratic type of mind, not a dictator, to run one of the government departments most successfully. Fundamentally, the problem is one of coördination and coöperation, while at the same time there is sufficient centralization to iron out decisively from time to time conflicts in policy.

I have referred to the enormous possibilities of centralized power in the hands of an executive who sits at the head of a great government department. It is well to recognize, too, some of the limitations on his power. In the very nature of things, he cannot personally handle the millions of work items confronting his department. If he does his job well, he *organizes his department to handle these things well.* If the head does his job well, much of his

effort is in the direction of enlisting the full dynamic power of his personnel; he causes his people to contribute continually and in every way to the functioning of the agency, not merely to respond to orders.

Just as physical limitations require the executive at the top thus to organize his function, so do physical limitations of the whole Washington staff dictate a growing decentralization of administration into forms, locations, and personnel that continually are refreshed and checked and guided by closer association with the people for whom the programs exist. As there is more centralization of policy determination and more complexity of governmental functioning, there must be more decentralization in administration. Yet this must be a decentralization that makes the policy fully effective—a decentralization that does not defeat policy nor surrender responsibility. The man at the top of one of the government departments must translate the President's policy into the detailed policies of his particular agency.

The fact is that a statement of governmental policy is only the beginning of the very complicated job of carrying that policy into action. We have many agencies involved in the process. The top men in these agencies must constantly negotiate agreements on action from the top, and must pass the agreements on down to their associates. I hope that the enlargement of the President's immediate staff and the improved definition of the work of all his staff, both in the White House and in auxiliary offices, will lighten the job of coördination at the top.

Another greatly needed change is to remove from the department heads much of the routine work required by law, so that more time can be spent on inter-departmental exchange of information at the top, and so that more attention can be given to planning coördination. Effective action in carrying out the policy of a President requires understanding on all fronts, and from top to bottom, of the common purpose of administration. The heads must share an understanding of fundamental policy, and then permeate their own respective organizations with the understanding. It is just as important for a field agent in a county to understand the program as for the heads to share it. The top executive can use his staff and his action heads, of course, in this process of transmitting an understanding of policy.

The man at the top also must fulfill his political responsibility to

the people—and in saying this I am using the word "political" in the best sense. The political responsibility involves coming into continual contact with congressmen, governors, mayors, and groups of citizens. As long as we have a representative government, we shall have two major parties and regional and occupational pressure groups. The party represents not so much an educated analysis of the trend of the times as it does the desires which come fresh from the people at a particular moment. It is easy for those who sit in their ivory towers to make fun of the current state of opinion of the public mind. It is the people who re-elect or turn down. It is the people who decide whether policies are to be perpetuated or thrown out of the window. Because of this situation, I believe that it is my duty to spend considerable time talking to the public about the policies of the Department for which I am responsible. If I and the people in my Department do not explain the relationship of the farm policy to the general welfare, we should be to blame if the public and the high-pressure groups got wrong ideas.

A cabinet officer must of necessity spend three or four hours of his working day conferring with members of Congress, officials of other Federal agencies, state and local officials, representatives of the various organized groups, and so on. He must also spend several hours a day with department officials, his staff men, and his bureau chiefs. From time to time, he must sit in coördinating councils. He must plan his job of presenting policy ideas to the public, and he must be prepared to travel to inspect the work of the department in the field.

I should like to say just a brief word about delegation of authority. The very essence of being a good executive is to pick men of integrity who understand your policy objectives. The poorest executives are those who dip too much into details. Failing to see the woods for the trees, they get hopelessly lost, trying to do work which could be done better by someone else. The strength of top executives should be saved for the really important policy questions, for contacts with members of Congress, for public contacts, for coördination with the states, for coördination within the department, and for coördination with other departments. This means that the cabinet officer must be willing to delegate authority to men who understand how to blend policy and management on behalf of the general welfare in a sensible way. I have brought into

my office in times past a number of different men to whom I have been willing to delegate authority. Sitting in the office and meeting with a great variety of experiences, they have rapidly developed in wisdom, and some of them have gone out to serve successfully very large agencies.

We have learned a lot in the last seven years about administration. When I look back to the hectic days of 1933 when we started certain programs, I realize that in the main we came out of the fury with relatively little waste of money and man-power. I believe you would agree that we got much more for a dollar spent in this period than we got, or would get, in a war period. This peace-time acceleration also taught us as much about management as the World War did. When things had settled down, the President's Committee on Administrative Management presented a report which will no doubt be a landmark in the history of administrative reorganization. I think that report, because of its breadth of vision and its appreciation of the purposes behind public management, was one of the major contributions to political science. Now we are carrying out some of the recommendations of that report.

There is still a need for more attention to management. I think that the executive branch as a whole, not only in the cabinet but throughout the ranks of the service, needs to be more aware of the need for improvements in management. So, too, I think that the Congress needs to recognize, and to make realistic with financial support, better management as an essential of government. The program of work now conducted by the Federal government involves numerous new points of contact between the government and its citizens, business firms, trade and other associations, and states, counties, and municipalities. Unless the highest degree of competence in administration prevails, the penalty which the public will pay and the consequent loss of confidence in, and respect for, the process of government far outweigh the financial costs of really superior management.

If we look at the size of administration and the need for delegation of authority, and if we look also at the increasing importance of good management in a government which is much more an intimate part of the daily lives of its citizens, we recognize that men are the crucial need.

As I said in the beginning, we have a great many public servants already at work who are reliable, who can see the whole including its parts, who can think consistently of the general welfare as the reason for their being. We need a steady new supply of men who can adequately serve the public in a period of constant adjustment to change. We must look to the teachers to train men in the broad vision, to explain the facts of economic and social change which call for public action, to stimulate faith in the American way to life, to inspire students with an understanding of the dignity of man and the personal values to be obtained from serving the public. We must look to the older men in the public service to inspire the younger men with breadth of vision and knowledge and with a dedication to the public interest. Many of the public servants already on the job are doing this now. I trust that, more and more, the professional association of civil servants with the teachers and students of government in such organizations as the American Political Science Association and the Society for Public Administration, will develop a tradition of public service in this country which will bring benefits to all citizens as we meet the public problems brought by change.

ADMINISTRATION, A FOUNDATION OF GOVERNMENT*

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The authors of the Constitution of the United States regarded it as a triumph for the human spirit in America that a new form of government could be established by the process of discussion, deliberation, and popular action, as distinguished from the age-long processes of violence. Looking backward from their time and forward into our own, we may say that they were justified in their celebration.

With reference to a far less momentous occurrence, this modest occasion, we may properly regard as a triumph for the same spirit a voluntary action of public officials and interested citizens looking to the resolute and continuous improvement of the public services. It is this action, the establishment of a Society for Public Administration, that we are ratifying and approving today. These officials and these citizens are no hirelings of a despotic power, taking orders from above. They are not seeking the aggrandizement of a class, bent on exploiting and holding down a subject people. They are not concerned primarily with emoluments, promotions, and honors as such. On the contrary, they are proposing to search their own hearts and minds, to study ways and means of making more efficient and economical the services rendered by government to the people. They do not wish to diminish either civil liberties or individual responsibilities in society. On the contrary, they cherish these eternal values and intend to discover and develop schemes and methods of administration deliberately adapted to the perpetuation of these precious elements in the American heritage.

The step taken today, though it may seem novel to some, is only the culmination of a long chain of events, extending over a period of forty years and more. The establishment of systematic instruction in comparative administration under the auspices of the late Frank J. Goodnow at Columbia University long ago was among the great beginnings. The organization of the New York Bureau of Municipal Research was another advance. The foundation of

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the Governmental Research Association was still another. The spread of instruction in administration among our universities, the creation of numerous societies of public officials, the growth of civil service legislation, the self-dedicated and distinguished careers of innumerable men and women in various branches of public administration, the deepening recognition of the vital relation between efficient and honorable administration and the very existence of our society and form of government—all these and more have signaled through the years the coming of this day and the action which is here taken.

It is perhaps because I have been associated in a humble capacity with the history of this movement since my student days under that great and good man, Frank J. Goodnow, that I have been invited to speak on this occasion. Perhaps I am a gray and moss-covered monument, set down in time, as one of the marks on the long path leading to the present event. Circumstances invite memories, therefore, but I shall spare you any such recital, knowing full well that it is not what I say here but what you do here that will count fatefully in the history of our political system in the distant years to come.

It seems far more appropriate that I should summarize in a few sentences the main conclusions in respect of administration which I have reached in my experiences and studies. Paraphrasing the language of my distinguished friend, Dr. Alfred Cohn, specialist in cardiac diseases at the Rockefeller Institute, I may remark, by way of preface, that it is the business of science, in dealing with any subject, to make true statements about it, of the utmost generality, and in the fewest possible words. Remembering this admonition, I present, for what it is worth, and may prove to be worth, the following bill of axioms or aphorisms on public administration, as fitting this important occasion:

1. The continuous and fairly efficient discharge of certain functions by government, central and local, is a necessary condition for the existence of any great society.

2. As a society becomes more complicated, as its division of labor ramifies more widely, as its commerce extends, as technology takes the place of handicrafts and local self-sufficiency, the functions of government increase in number and in their vital relationships to the fortunes of society and of individuals.

3. Any government in such a complicated society, consequently any such society itself, is strong in proportion to its capacity to administer the functions that are brought into being.

4. Legislation respecting these functions, difficult as it is, is relatively easy as compared with the enforcement of legislation, that is, the effective discharge of these functions in their most minute ramifications and for the public welfare.

5. When a form of government, such as ours, provides for legal changes, by the process of discussion and open decision, to fit social changes, then effective and wise administration becomes the central prerequisite for the perdurance of government and society —to use a metaphor, becomes a foundation of government as a going concern.

6. Unless the members of an administrative system are drawn from various classes and regions, unless careers are open in it to talents, unless the way is prepared by an appropriate scheme of general education, unless public officials are subjected to internal and external criticism of a constructive nature, then the public personnel will become a bureaucracy dangerous to society and to popular government.

7. Unless, as David Lilienthal has recently pointed out in an address on the Tennessee Valley Authority, an administrative system is so constructed and operated as to keep alive local and individual responsibilities, it is likely to destroy the basic wellsprings of activity, hope, and enthusiasm necessary to popular government and to the flowering of a democratic civilization.

The validity of these axioms may be illustrated, though not proved, by reference to the fate of that great society, the Roman Empire of antiquity, which perished from the earth. Historians of the decline and fall are fairly well agreed that in the latter years of the Empire, its administrative system, which had grown ever more complicated and centralized in the days of prosperity, at last destroyed local autonomy, proved to be incompetent for its tasks, and sank into ruins with the society which it had once powerfully helped to sustain.

If these things be true and of good report, it follows that this occasion, which may seem trivial amid the rush and roar of affairs, may receive a strange elevation at the hands of those historians who, in distant years, seek to trace the trajectory of our civilization.

At all events, we may be well assured that good work, honestly done, with an unfailing interest in the public welfare, is worthy of great talents and high aspirations, brings its own rewards and satisfactions, and somehow anchors itself in the economy of universal history. With this assurance and under this sign, the new society, launched today, may look forward to a service which will not end until the language of the Gettysburg address is heard no more on this continent.

THE NATURE OF POLITICAL REPRESENTATION, I

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Much has been written on the origin, development, and characteristics of representative government; and in recent years there has been a revival of interest in this subject, and a further analysis of the evidence and criticism of views formerly accepted.[1] In this extensive literature, considerable attention has been given to the nature of political representation and representative government, and to the relation between the representative and his constituents, with important differences in the definitions and meanings ascribed to these terms. Many writers have assumed that their views on these matters are the only correct statements; but some of the more recent writers have recognized, to some extent, the need for a closer analysis of the different senses in which these terms may be employed. An examination of different views may be of service in leading to a clearer understanding of the problems involved.

Etymologically, the literal meaning of represent is to "present again," and from this it has come to mean to appear in place of another. In this secondary sense, a representative has been defined as "an agent, deputy, or substitute, who supplies the place of another or others." Other terms, of similar meanings, are: attorney, delegate, deputy, proctor, and proxy.[2] These terms usually imply

[1] C. A. Beard, "The Teutonic Origins of Representative Government," *American Political Science Review*, Vol. 26, pp. 28, 223 (1932); *The Cambridge Ancient History; The Cambridge Medieval History; The Cambridge Modern History;* R. W. and A. J. Carlyle, *A History of Medieval Political Theory*, V, Chap. 9; VI, Pt. II, Chap. 6; V. Chapot, *The Roman World* (1928), Chap. 10; Maude V. Clarke, *Medieval Representation and Consent* (1936); E. H. Hardy, "The Provincial *Concilia* from Augustus to Diocletian," in *Studies in Roman History* (1908); Hefele et Hergenrother, *Histoire des Conciles* (1907 ff.); Gaillard Lapsley, "Some Recent Advances in English Constitutional History," *Cambridge Historical Journal*, Vol. 5, p. 191 (1936); J. A. O. Larson, "Representative Government in the Pan-Hellenic Leagues," *Classical Philology*, Vols. 20, 21, pp. 213, 52 (1925–26); R. B. Merriman, "The Cortes of the Spanish Kingdoms in the Later Middle Ages," *American Historical Review*, Vol. 16, p. 495; H. B. Percival, *The Ecumenical Councils* (1900); E. M. Sait, *Political Institutions* (1938), Chap. 20; Frank Tenney, "Representative Government in the Macedonian Republics," *Classical Philology*, Vol. 9, p. 49 (1914); "Representative Government in Ancient Polities," *Classical Journal*, Vol. 14, p. 533 (1919); Dorothy B. Weske, *Convocations of the Clergy* (1937).

[2] Treatises and case books on the law of agency; *Judicial and Statutory Definitions of Words and Phrases;* F. E. Luepp, "Do Our Representatives Represent?",

selection or authorization by the original party, and often imply some limitation of the authority conferred, though at the same time there may be also some degree of discretion on the part of the representative. Other terms do not require selection by the principal, and may be subject to little or no limitation. An actor does not have to be authorized by the person whose character he represents, nor a parent by his children, a guardian by his ward, nor a trustee by the person he represents. But there is usually a moral, and often a legal, obligation to act in their interests.

Some form of representation seems to be necessary in any social group whose decisions must be carried out by particular individuals. Thus the chairman of a meeting who announces the result of a vote and the officers of a society who execute its policies are representative agents. So, too, the chief of a tribe represents his tribe, and a hereditary monarch represents his subjects, on the assumption that they are acceptable to those under authority.

In his *History of Political Theories*, Dunning states: "Representation as a principle does not appear in political theory until the later centuries of Rome, when the prince was regarded as the representative of the Roman people taken collectively." According to Gierke, the medieval idea of representation ascribed a representative character to the monarch, such as the Emperor and the Pope, and to such bodies as the seven electors of the medieval Empire and the cardinals in the Church, as well as to assemblies and councils chosen by qualified citizens in organized communities. In the conciliar period, the superior authority of the more representative council over the Pope was advocated, while Marsiglio of Padua and Ockham held that the ultimate authority was in the people.

Similar views as to the representative character of single rulers and hereditary groups have been expressed by more modern writers. Hobbes said: "Men who are in absolute liberty may give authority to one man to represent them every one." Bolingbroke's *Idea of a Patriot King* was based on the view that he represented the true rule of the people. Edmund Burke took the position that: "It is not the derivation of the power of that house [the Commons] from the people which makes it in a direct sense the representative. The king is the representative of the people; so are the Lords. They are all trustees for the people, as well as the Commons; because no

Atlantic Monthly, Vol. 114, p. 433 (1914), noting differences in the position of attorneys, diplomatic envoys, guardians, and proxies.

power is given for the sole sake of the holder." And the philosopher Kant held that king, nobles, and elected delegates may be representative.

In the United States, it has been urged that the President, elected indirectly by the whole nation, may be more representative of the entire country than the members of Congress, elected by local constituencies.

The view has been expressed that early systems of representation, such as those in the Greek federations and the medieval estates, differed from modern ideas in that, in the former, the representatives were mere delegates with limited powers acting under definite instructions, while the latter have general authority to act on their own judgment. It seems probable that the earlier systems were based to a large extent on the principle of instructions;[3] though, at the same time, the representatives may often have largely influenced the final result.

A basis for the later view, in the case of the English Parliament, is found in the language of the writ of summons for the Parliament of 1295 and later, which provided: "The said knights and burgesses to have full and sufficient powers for themselves and for the communities. . . . for doing what shall then be ordained according to the common council in the premises." But it is not clear that the language of the writ determined the authority of the representatives. The early parliaments were summoned to assent to proposals from the king; and the development of other functions and an active initiative came but slowly.

Hallam considered that the earliest assertion of the principle "that each member of the House of Commons is deputed to serve, not only for his own constituents, but for the whole kingdom," was a bill introduced in 1571 to render valid the election of non-resident burgesses. According to the king's writ, confirmed by act of Parliament (in the reign of Henry V), every city and borough was to elect none but members of its own community. In practice, this provision was not always followed, and many of the borough representatives were non-residents; and the bill would have legalized this practice. In opposition, however, it was urged that those who were acquainted with the borough could best present its needs, and that the election of non-residents promoted the

[3] Alice M. Holden, "Imperative Mandate in the Spanish Cortes of the Middle Ages," *American Political Science Review*, Vol. 24, p. 886 (1930).

interference of noblemen in the elections. The bill was committed, but no further action is recorded, and the practice of electing non-residents continued.[4]

Not many years after this, Sir Thomas Smith, in his work, *De Republica Anglorum* (1583), expressed something of the later view: "For every Englishman is intended to be present [in Parliament] either by person or by procuration and attorney . . . and the consent of Parliament is taken to be every man's consent."

In 1643, John Winthrop, meeting the contention that "the greatest power is in the people, therefore it should be in their deputies," replied: "Originally and virtually it is; but when they have chosen their judges, etc., their judiciary power is actually in those to whom they have committed it, and those are their magistrates in such order as before is declared."[5] About the same time, Charles I referred to the houses of Parliament as the representative body of the people. The act of Parliament (1649) which abolished the office of king asserted the right of being governed by its own representatives or national meeting in council. Cromwell, in a speech to Parliament (1655), said: "I have been careful of your safety and the safety of those you represented."[6]

The democratic ideas of the Levellers and the Agreement of the People expressed dissatisfaction with the established system of representation in Parliament; and the new arrangements under Cromwell were an attempt at a more equitable system. But in 1660 the former system was restored. John Milton's proposal for a perpetual Parliament (1660) implied that, after their election, members were not responsible to their constituents. In the Restoration period, the responsibility of members of Parliament to their constituents was reflected in the practice of Sir Andrew Marvel, who carried on an active correspondence with his constituents in Hull and announced his intention to follow their wishes. The first Earl of Shaftesbury, leader of the movement for the exclusion of the Duke of York from the throne, favored voting by ballot and correcting the anomalies of the existing system of representation, and drew up a series of instructions to secure the election of members who would support the policies he favored.

[4] Hallam, *Constitutional History of England* (1865 ed.), I, p. 265. The act requiring local residence was not repealed until 1774. Anson, *Law and Custom of the Constitution* (3rd ed., 1897), Pt. I, p. 90.

[5] Quoted in R. Luce, *Legislative Principles*, p. 35.

[6] Murray's *Oxford Dictionary*.

What came to be a widely accepted view of parliamentary representation in the eighteenth century was set forth by Algernon Sidney in his *Discourses on Government* (1698). He held that members of Parliament were not ambassadors representing particular constituencies (Kent, Sussex, Lewes, or Maidstone), but had full powers to act for the whole kingdom. This view was acted on by the Tories in dealing with the Kentish petition in 1701; and by the Whigs in the passage of the Septennial Act of 1715, and in opposing the motion for its repeal in 1735.[7]

In the case of the Kentish petition, a Tory House of Commons imprisoned five gentlemen who presented a petition in favor of the Whig policy. Daniel Defoe criticized this action, and published a pamphlet entitled *The Original Power of the Collective Body of the People of England* (1701), in reply to Sir Humphrey Mackeith's *Vindication of the Rights of the Commons of England.* The petitioners were released on the rising of Parliament. The Septennial Act extended the life of the sitting House of Commons to avoid the risk that a new election would endanger the Hanoverian succession.

Rousseau denied the possibility of the representation of sovereignty or legislative power: "Sovereignty cannot be represented for the same reason that it cannot be alienated; it consists essentially in the general will, and the will cannot be represented; it is the same or it is different; there is no medium. The deputies of the people, then, are not and cannot be its representatives; they are only its commissioners and can conclude nothing definitely. . . . The idea of representation is modern; it comes to us from feudal government, . . . In the republics, and even in the monarchies of antiquity, the people never had representatives, they did not know the word. . . . in their legislative power the people cannot be represented; but they can and should be represented in the executive power, . . ."[8]

In a recent study, *Ideas of Political Representation in Parliament, 1660–1832*, Mr. P. A. Gibbons considers that before the middle of the eighteenth century the existing political machinery in England provided a sufficient channel for the really efficient forces of political thought; but that after 1760, as a result of the industrial

[7] P. A. Gibbons, *Ideas of Political Representation in Parliament, 1660–1832* (1914).

[8] *The Social Contract*, Chap. 5. In his later and more specific proposals for the governments of Corsica, Geneva, and Poland, Rousseau provided for the election of representative agencies.

revolution and the active influence of the Crown, the House of Commons became out of touch with the people. But such leaders of thought as Blackstone, Burke, and Paley held that members of Parliament represented the nation as a whole. Blackstone held that members of Parliament represented the whole realm and not merely particular constituencies; but he criticized the rotten boroughs, and favored the representation of new towns and a property qualification for voting.

Burke's restatement of Sidney's position, and his assertion of the right of a member of Parliament to act on his own judgment against that of his constituents, in his address at Bristol, are well known. But he also expressed somewhat different views on various occasions. In 1769, in his "Observations on the Present State of the Nation," he urged the practical impossibility of the representation of America in Parliament as a reason why Parliament should not tax the colonies. In 1774, before his address at Bristol, he had written: "The virtue, spirit, and essence of a house of commons consists in its being the express image of the feelings of the nation. It was not instituted to be a control *upon* the people. . . . It was designed as a control *for* the people." In the address at Bristol, he said: "It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitting attention." In 1792, in a letter on admitting Roman Catholics to the franchise, while upholding virtual representation as in some respects better than literal representation, he added: "But this sort of virtual representation cannot have a long and sure existence if it has not a substratum in the actual. The member must have some relation to the constituent. As things stand, the Catholic, as a Catholic . . . has no virtual relation to the representative, but the contrary." In his *Letters on a Regicide Peace* (1796), he urged that "those of adult age, not declining in life, of tolerable leisure . . . and who are above menial dependence" constituted the virtual representative of the people.[9]

William Paley, whose *Principles of Moral and Political Philosophy* (1785) had seventeen editions in twenty years, and for much longer was a standard text, upheld the then existing system of representa-

[9] *Works* (1839 ed.), I, pp. 71, 334–5; II, p. 12; III, p. 521; IV, p. 372.

tion in Parliament because it resulted in the election of capable men representing different classes and interests.

> Every district of the empire enjoys the privilege of choosing representatives, informed of the interests and circumstances and desires of their constituents, and entitled by their situation to communicate this information to their national council. . . . By annexing the right of voting for members of the House of Commons to different qualifications in different places, each order and profession of men in the community becomes virtually represented. . . . The number, fortune and quality of the members, the variety of interests and character amongst them, above all the temporary duration of their power, and the change of men which every new election produces, are so many securities to the public, as well against the subjection of their judgment to any external dictation, as against the formation of a junto in their own body, sufficiently powerful to govern their decisions.

Advocates of reform in the system of parliamentary representation ranged from those who favored the elimination of the more obvious abuses of pocket and rotten boroughs and the sale of seats, to those who supported a more uniform suffrage, manhood suffrage, equal districts, and annual parliaments. These demands implied that the basis of representation would influence the choice and attitude of the representatives. The Society of the Bill of Rights definitely supported the view that members of Parliament were delegates who should follow the wishes of their constituents; and the practice of sending instructions became more common. Samuel Romilly justified to himself his purchase of a seat in Parliament (in 1808) as the best way of securing his own independence, in view of the rottenness of the representative system.

Bentham's views were not clear or consistent. In his *Constitutional Code*, he says: "Separately or collectively, the constituents of a member of the legislature will at all times, as such, make to such their deputy what communication they think fit: . . . But in so far as the good of the community, taken in the aggregate, is the paramount object of his care, no obedience will he pay to any such particular will, to the detriment of what appears to him the universal interest. Paramount to his duty to a party is, in every occasion, his duty to the whole." Yet he adds that "if a deputy, after speaking in support of an arrangement, which in the opinion of his constituents is contrary to their particular interest, gives his vote against that same arrangement, in such conduct there is not any real inconsistency. By his *speech*, his duty to the public is fulfilled by his *vote*, his duty to his constituents."[10]

[10] *Constitutional Code*, p. 44.

Madame de Staël also opposed the view that representatives should be bound by instructions from the electors:

> To all the delays inherent in the plan of deliberating in three orders, we are to add the *imperative mandate;* that is, instructions from the electors, imposing on the deputies the necessity of conforming their opinions to the will of their constituents, on the principal subjects discussed in the assembly. This antiquated usage was suited only to the infancy of a representative government. Public opinion had hardly any weight, in an age when the communication between one province and another was a matter of difficulty, and particularly when there were no newspapers, either to suggest ideas or communicate intelligence. But to oblige deputies in our days to adhere strictly to provincial instructions, would have been to make the States General an assembly, with little other power than that of laying opinions on the table. The information acquired in debate would have been fruitless, since they would have had no power to deviate from their previous instructions. Yet it was on these imperative orders that the nobility rested their chief arguments for refusing to vote individually.[11]

In the American constitutional convention of 1787, differing views were presented as to the nature and purpose of representation, not only by different members, but to some extent by the same persons. Early in the debates, James Wilson said: "The doctrine of representation is this—first the representative ought to speak the language of his constituents, and secondly that his language or vote should have the same influence as though the constituents gave it." He was of the opinion that "the national legislative powers ought to flow immediately from the people, so as to contain all their understanding and be an exact transcript of their minds." But, at another time, he conceived it difficult to know what are "the sentiments of the people." "Those of the particular circle in which one moved were commonly mistaken for the general view." He called attention to the fact that, in some states, "the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the general government, and perhaps to that of the people themselves."

In his lectures at the University of Pennsylvania in 1790, Wilson stated: "The constitution of the United States and of Pennsylvania rest solely, and in all their parts, on the great, democratical principle of a representative of the people." "Representation," he said, "is the chain of communication between the people

[11] *Considerations on the French Revolution,* Pt. I, Chap. 17. Quoted in Bailey, *The Rationale of Political Representation.*

and those to whom they have committed the exercise of the powers of government."

In reply to the question, "What is the principle of representation?", William Patterson said: "It is an expedient by which an assembly of certain individuals chosen by the people is substituted in place of the 'inconvenient meeting of the people themselves'." Yet he took the lead in the compromise which provided for equal representation of the states in the Senate, while the members of the House were to be apportioned according to population.

Madison considered that "it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them." At another time, he "observed that if the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the convention could say what the opinions of his constituents were at this time; much less could he say what they would think if possessed of the information and lights possessed by the members here; and still less what would be their way of thinking six or twelve months hence." In one of the *Federalist* papers, he said: "You must first enable the government to control the people; and in the next place oblige it to control itself."[12]

In the *Federalist*, Hamilton held that "it may well happen that the public voice, pronounced by representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for that purpose," but added that "on the other hand the effect may be inverted." He believed that extensive republics were more favorable to the election of proper guardians of the public weal, as there is a greater option and consequently a greater probability of a fit choice; and he argued against the separate representation of distinct economic classes.[13]

In another of the *Federalist* papers, it was stated that members of Congress were to be guided by "the deliberate sense of the community," but this was not to "require an unqualified compliance to every sudden breeze of passion, or to every transient impulse which the people may receive from the acts of men, who flatter their prejudices to betray their interests."

The position that each member of a representative body is a

[12] M. Farrand, *Records of the Federal Convention*, quoted in N. S. Carpenter, *Democracy and Representation* (1925), No. 2. [13] *The Federalist*, No. 35.

representative of the whole nation or state, and not merely of the constituency which elects him, is in harmony with the doctrine of virtual representation urged in defense of the electoral system in England in the eighteenth and early nineteenth centuries, when many urban communities and the colonies elected no members to Parliament. This principle was announced by the States-General of France in 1789, and was expressly declared in the French constitution of 1791. It appears also in the Austrian electoral law of 1867, in the German constitution of 1871, the Swiss constitution of 1874, the French organic laws of 1875, and in many of the new constitutions since the World War. But it is not declared in any American constitution.

Samuel Bailey, an English writer, in an essay on *The Rationale of Political Representation* (1835), summarized his conclusions as to the true relation of the representative to his constituents as follows:

> The office of the electors is to appoint a deputy to the supreme legislature, to regulate the concerns of the community; and they have all the influence over the deliberations of that body, which is implied in the power to choose a man whose opinions are in accordance with their own. The duty of the representative is to use the authority thus reposed in him, according to his own judgment of the public good; and lastly, when the term of the trust has expired, it devolves on the electors to pronounce sentence on the manner in which it has been discharged, by renewing or withdrawing their confidence, or by other manifestations of opinion which the peculiar occasion may require. In the power of choosing originally a man of their own views, of scrutinizing every act which he performs in his official capacity, and of withdrawing the trust at the termination of the period for which he is elected, they have all the security which the case admits, that he will be guided by a single regard for the public good; while, by leaving him to act under these restraints, they derive the advantage of that superior intelligence which his position implies and his opportunities confer.[14]

George Cornwall Lewis maintained that a representative is entitled to form an independent judgment, is legally answerable to no one for his conduct, but is bound by a moral obligation to consult and vote for the good of the whole community.[15]

Lord Brougham, in his *Political Philosophy* (1843), distinguished federal and representative principles, and analyzed the latter at some length. "The essence of representation is that the power of the people should be parted with, and given over, for a limited time, to the deputy chosen by the people, and that he should perform the

[14] P. 143. [15] *Use and Abuse of Political Terms* (1832).

part in the government which, but for the transfer, would have been performed by the people themselves." A member of Parliament "represents the people of the whole community, exercises his own judgment upon all measures, receives freely the communications of his constituents, and is not bound by their instructions, though liable to be dismissed by not being reëlected in case the difference of opinion between them is irreconcilable and important." He criticized the views of Rousseau and the "erroneous opinion" of Burke, and set forth a series of canons of representative government. He held that the elective franchise should be extended to all persons with a good plain education, and distributed by large electoral districts to classes, in the combined ratio of their importance and numbers.[16]

About the middle of the nineteenth century, Guizot, the French historian and statesman, denied that representative government is based on the principle of the sovereignty of the people, and held that it is founded on truth, reason, and justice, and that its essential characteristics are a division of powers, election by those qualified, and publicity.[17]

In his *Representative Government* (1861), John Stuart Mill defined its meaning as: "that the whole people or some numerous portion of them, exercise, through deputies periodically elected by them, the ultimate controlling power which, in every constitution, must reside somewhere." He held that definite pledges should not be required from members; but that electors are entitled to a full knowledge of the political opinions and sentiments of their candidates; and are not only entitled but often bound to reject one who differs from them on the few articles which are the foundation of their political belief; and that they ought to put up with his expressing and acting on opinions different from theirs on things not included in their fundamental articles of belief. If there is no provision for the representation of minorities, the representative should have unfettered discretion. At the same time, he considered that, if they so choose, the electors can convert the system of representation into one of mere delegation.[18]

Thomas Hare noted that: "Representation itself is a matter of

[16] *Political Philosophy*, Pt. I, Chap. 2; Pt. III, Chaps. 6, 11; "The British Constitution, *Works*, XI, p. 35 ff.

[17] *Representative Government in Europe*, Pt. I, Lectures 6–8.

[18] *Representative Government*, Chaps. 5, 12.

daily occurrence and common necessity. It is the vicarious performance of duties which cannot be personally executed. It intervenes in commerce, in jurisprudence, in education, and in a thousand other forms. In a multitude of circumstances people are compelled to place themselves and their interests in the hands of others."

Bluntschli took the position that the modern representative is a state representative, not the representative of any person, corporation, or group, and that his duty is a state duty. He is not bound by the instructions of his constituency, nor compelled to answer to them for his conduct.[19]

Theodore Woolsey accepted the prevailing view of his time as to the relation of the representative to his constituents. "A representative carries with him the political rights, powers, and duties of those who have constituted him as such. He differs from a deputy who is assigned to certain specific duties for his principals, and cannot rightfully deviate from his instructions. He is thus untrammelled in theory by any orders from his constituents, and *can* act at his discretion according to the light which he gathers in an assembly composed of similar persons. . . . Each representative is to consider the whole state first. . . . He can, therefore, lawfully place himself under no pledges or instructions which are binding upon him; . . ."[20]

In his lectures on the *Principles of Political Obligation*, Thomas H. Green said: "There are two principal conceptions of the essential nature of the representative. According to one, he is a senator; according to the other, he is an agent or delegate. The former theory holds that he is elected for his superior wisdom or integrity or both, the election signifying that the constituency desires to entrust its affairs and those of the nation to the direction and management of his superior mind."[21]

Henry Sidgwick upheld a representative system of government on the following grounds:

> The periodical election of electors by different divisions, sufficiently numerous, of the community, tends to give us, if not ideal statesmen, at any rate a body of men who possess in the aggregate the special empirical knowledge that is most indispensable. . . . An assembly chosen for a limited time by the people at large is held [more] likely to know what the

[19] *Allgemeines Staatsrecht*, pp. 54–55.
[20] *Political Science* (1886), I, pp. 294–295.
[21] *Works* (1885–8), II, p. 170.

people at large want than any council or assembly otherwise appointed, and be more concerned to provide it. . . . Such election tends to render the legislation more acceptable to the governed and therefore less likely to be evaded, or, if obeyed, to cause friction and discontent.

Little weight was given to the educative effect of representative or popular government, as urged by Mill. The method of popular election is supported, not because the elected legislators "will or ought to vote on any particular question [as] the persons electing them would vote; but in the view that the persons so chosen will be more likely to promote the real interests of the community . . . than persons otherwise appointed."[22] Sidgwick did not consider representative government, "even when the suffrage is universal, as merely a mode of organizing democracy, but rather as a co-ordination or fusion of democracy and aristocracy. This fusion or coördination may become less or more aristocratic in character through various minor modifications."[23]

John R. Seeley considered that a representative parliament "is an elective aristocracy. It is a body of men who have been selected by the community as more fit than the average to attend to public affairs, to make and unmake the government."[24]

In an article on "Representative Institutions in Trade Union Democracy," Sidney and Beatrice Webb noted that trade union representatives, while expressing their own views, took active steps to learn the views of their constituents, and took action in accordance with the latter. Attention was called to the practice of the Swiss Federal Council in carrying out the policies of the legislative body even when not in accordance with their own views.[25]

(To be concluded in the next issue)

[22] *The Elements of Politics* (1891, 1897), Chap. 20, pp. 371–378.
[23] *Ibid.*, pp. 616–617.
[24] *Introduction to Political Science* (1896), p. 350.
[25] *Political Science Quarterly*, Vol. 11, p. 640 (1886).

CONSTITUTIONAL LAW IN 1938–1939

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1938

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The 1938 term of the Supreme Court brought substantial changes in its personnel. Mr. Justice Cardozo died on January 9, 1938. He was succeeded by Mr. Justice Frankfurter, who took office on January 30, 1939. On February 13, 1939, Mr. Justice Brandeis retired, and on April 17 Mr. Justice Douglas was appointed to fill his place. By the end of the term, therefore, four justices appointed by President Roosevelt had taken office. It is too early to appraise the results of these appointments upon the decisions and doctrines of the Court. One statement may be made, however, which throws some light upon the recent trend of judicial decisions. In preparing the present survey of the Court's decisions, some sixty cases were examined, all but one or two of them turning upon constitutional issues. In these sixty-odd cases, Mr. Justice McReynolds and Mr. Justice Butler, the two remaining members of the conservative "old guard," dissented together twenty-five times. In several instances they were joined in dissent by Mr. Justice Roberts, and once or twice by the Chief Justice. In the main, however, they stood alone against a compact majority of six or seven justices. With the death of Mr. Justice Butler in the fall of 1939, Mr. Justice McReynolds stands like the boy on the burning deck amidst what obviously appears to him to be the imminent destruction of the old constitutional system.

A. QUESTIONS OF NATIONAL POWER

I. FEDERAL AMENDMENTS

In two important cases, the Court answered several important problems relating to the process of federal amendment and by inference seems to have answered almost any other problem which may arise in that field. The first of these cases was Coleman v. Miller,[1] which dealt with the ratification by the state of Kansas of the federal Child Labor Amendment. This amendment was proposed by Congress in 1924. In January, 1925, the legislature of Kansas adopted a resolution rejecting it. In January, 1937, a concurrent resolution was introduced in the senate of Kansas ratifying the amendment. The forty senators present divided twenty to twenty. The lieutenant-governor as presiding officer cast the deciding vote in favor of ratification. The resolution was later adopted by the house of representatives. Twenty-one members of the Kansas senate,

[1] 307 U.S. 433, 1939.

joined by three members of the house of representatives, sought mandamus in the state supreme court to compel the secretary of state to erase the endorsement on the resolution that it had passed the senate, and to restrain the officers of the house and senate from signing the resolution, and the secretary of state from authenticating it and delivering it to the governor. The state supreme court denied the mandamus.

The Court affirmed the decision of the Kansas court, thereby declining to hold invalid the state's ratification of the amendment. The Court, speaking through Chief Justice Hughes, dealt with four points which were presented to it. First, it held that it had jurisdiction, since the petitioners had sufficient standing to seek judicial relief. This is true because "these senators have a plain, direct, and adequate interest in maintaining the effectiveness of their votes. . . . They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect and the state court has denied that right and privilege." Second, it was urged that the lieutenant-governor had no authority under the state constitution to cast the deciding vote on the resolution of ratification. The Court did not deal with this issue on its merits. It was evenly divided on the question whether this attack upon the authority of the lieutenant-governor presents a justiciable controversy or a political question, and accordingly expressed no opinion. Third, the Court held that the effect of the previous rejection of the Child Labor Amendment by the legislature of Kansas upon the validity of its later ratification raised a political question to be answered by Congress, and not a judicial question to be answered by the Court. In support of this conclusion, the opinion discusses the attempted withdrawal by Ohio and New Jersey of their earlier ratifications of the Fourteenth Amendment. The issue raised by this attempted action was settled, not by judicial decision, but by concurrent resolution of the House and Senate declaring these ratifications to be effective. This shows that questions as to the validity of state ratifications of a federal amendment are to be determined by Congress alone. Whether a state which has once rejected a federal amendment may subsequently ratify it is the same kind of question as whether a state once having ratified an amendment may later reject it. Fourth, it has been urged that the Child Labor Amendment had, so to speak, died of old age and could therefore not be validly ratified in 1937. This argument was based mainly upon the case of Dillon v. Gloss,[2] in which the Court said that Article V implies that federal amendments shall be ratified within a reasonable time, that Congress could validly impose a reasonable time limit upon ratification, and that seven years (in the case of the Eighteenth Amendment) was reasonable. It was

[2] 256 U.S. 368, 1921.

argued that without any congressional time limit upon ratification there is still an implied constitutional requirement that ratification take place within a reasonable time. The Child Labor Amendment had been pending for thirteen years. During that period it had been rejected by more than one-fourth of the states. Consequently, it should be declared no longer capable of ratification. Again the Court declined to pass upon the merits of the question. Assuming that amendments should be ratified within a reasonable period of time, the question what is or is not a reasonable period of time is a political, and not a judicial, question and must be decided by Congress and not by the Court.

Two concurring opinions are worthy of comment. Mr. Justice Black, joined by Justices Roberts, Frankfurter, and Douglas, agreed with the majority that the effect of a rejection of an amendment by a state legislature upon its power later to ratify, as well as the period of time within which ratifications may validly be made, are political and not judicial questions. He took the majority to task for lack of consistency in failing to overrule so much of the decision in Dillon v. Gloss as assumes the right of the Court to determine whether a legislative seven-year time limit upon the ratification of an amendment is reasonable or unreasonable. The four justices, in other words, regard the federal amending process as " 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and [it] is not subject to judicial guidance, control, or interference at any point."

The same four justices, speaking through Mr. Justice Frankfurter, argued that the petitioners in this case had no standing in this Court. Overruled on this point, they agreed with the majority on the merits, but urged that the interest which the members of the Kansas legislature had in attacking the validity of the Kansas ratification was no greater than that of any other citizen of the United States who might feel aggrieved by what he regarded as an unconstitutional act.

Mr. Justice Butler dissented. In Dillon v. Gloss, the Court decided whether a legislative time limit upon ratification was reasonable or unreasonable. It should similarly decide in the absence of such legislative action whether an amendment had been before the country for an unreasonable period of time. Thirteen years is an unreasonable period of time. The Kansas ratification should be held ineffective. Mr. Justice McReynolds agreed.

Similar issues arose in slightly different procedural forms in Chandler v. Wise,[3] involving the ratification of the Child Labor Amendment by the legislature of Kentucky after an earlier rejection, and the Court reached the same result.

[3] 307 U.S. 474, 1939.

II. LEGISLATIVE POWER

1. COMMERCE POWER

(1) *The Validity of the Agricultural Marketing Acts.* Important questions under the commerce clause were raised by the federal statutes regulating the marketing of certain agricultural products, the establishment of production quotas of others, and the fixing of the prices to be paid to the producers of still others. While the following cases turned on the commerce clause, they also raised the question whether certain delegations of legislative power were valid or invalid.

Currin v. Wallace[4] arose from a petition for a declaratory judgment that the Tobacco Act of 1935 was unconstitutional and for an injunction against its enforcement. The act authorized the federal regulation of tobacco auction markets, in which tobacco moving in interstate commerce is customarily sold. The regulation seeks to establish uniform classifications of tobacco according to type and grade, and to provide inspection to make such classification effective. The absence of such uniform standards produced abuses which were a burden upon interstate commerce. The Secretary of Agriculture is authorized to establish the standards to be effective in the marketing of tobacco at auction, and to designate the markets where tobacco sold at auction customarily moves in interstate commerce. He is not to designate a market unless two-thirds of the growers in the area affected, voting in a referendum election, favor it. When a market has been so designated, the act forbids the sale of tobacco at auction therein until it has been inspected and certified to conform to the standards established by the Secretary. If the Secretary cannot provide enough inspectors for all auction markets within a designated area, he may designate first those markets where the greatest number of growers may be served with the facilities available. The Secretary designated twenty-three markets throughout the country, three of which were in North Carolina. Due to lack of expert inspectors, it was impossible to designate thirty-seven other markets in the state, and the three in question were selected because their facilities were the most adequate.

The Court upheld the act against four attacks on its validity. First, it was urged that the transactions on an auction market are local in character, and are not part of interstate commerce. The Court disagreed. An overwhelming preponderance of the tobacco sold on the designated auction markets is sold for shipment in foreign or interstate commerce. It has long been held that where goods are purchased in one state for transportation to another the purchase, quite as much as the transportation, is a part of interstate commerce. The interstate character of the transactions on these markets is not minimized by the fact that some tobacco

[4] 306 U.S. 1, 1939.

is sold for local use. Under its power to regulate commerce, Congress could validly prescribe the conditions under which sales on these markets may be made. Second, the statute is not invalidly discriminatory. It was urged that those doing business in auction markets which are not designated by the Secretary of Agriculture are free from the requirements of inspection and grading imposed by the Secretary's orders. The Court points out that there is no requirement of uniformity resting upon Congress in connection with the commerce power, and that the Fifth Amendment contains no equal protection clause. The classification involved in the act, however, is not arbitrary. Congress may establish reasonable classifications in the exercise of its delegated powers, and those here established are not unreasonable. Third, the provision for a referendum prior to the designation of auction markets is not an unconstitutional delegation of legislative power. Congress has full authority to establish these markets without such referendum. The power to effect the designation is the power of Congress and not that of the producers who vote on the matter. The referendum vote is merely a useful guide in determining the scope and application of the act. Nor is there unconstitutional delegation of legislative power to the Secretary. The purpose and basic policy of the act are clear from its provisions. The power given to the Secretary after investigation to establish standards and to designate particular markets is supported by a long line of precedents. Fourth, the Court fails to find any deprivation of the property of the petitioners without due process of law.

Mulford v. Smith[5] upheld the constitutionality of the Agricultural Adjustment Act of 1938 as applied by the Secretary of Agriculture to the 1938 tobacco crop of the appellants. The provisions involved were those authorizing the establishment of marketing quotas for flue-cured tobacco. When the Secretary of Agriculture finds that the total supply of tobacco exceeds the "reserve supply level" defined in the act, he is authorized to proclaim the total supply and put into effect a national marketing quota. This quota is to be the amount which will make available during the following year a supply of tobacco equal to the reserve supply level. Within thirty days after such proclamation, the Secretary is to conduct a referendum of the producers of the preceding year's crop to determine whether they favor the imposition of a quota. If more than one-third oppose, the quota shall not be effective. If established, the quota is to be first apportioned among the states according to the amount of tobacco produced in each state during the preceding five years. There is a limit below which the quota of the state may not be reduced. The state quota is then allocated amongst the farms which produce tobacco. The farm quotas are based on past marketing, with a minimum at the bottom. They are to be

[5] 307 U.S. 38, 1939.

worked out by local committees of farmers according to standards prescribed in the act. A dissatisfied farmer may have his quota reviewed by a local reviewing committee and ultimately by a court. If tobacco in excess of the quota for the farm on which it is produced is marketed through a warehouse man, the latter must pay to the Secretary a penalty equal to fifty per cent of the market price of the excess, and may deduct this amount from the prices paid the producer. In the present case, the appellants sought an injunction to restrain local warehouse men from deducting penalties from the sale price of tobacco sold for the appellants.

In an opinion by Mr. Justice Roberts, the Court disposed of three constitutional objections brought against the act. First, the act does not establish a statutory plan to control agricultural production which lies outside the delegated powers of Congress. It escapes the basic defect of the Agricultural Adjustment Act held void in the Butler case.[6] It does not undertake to control production. It places no limit upon the acreage which may be planted; nor does it penalize the planting and producing of tobacco in excess of the marketing quota. It merely restricts the amount of tobacco which may be marketed in any one year at the auction warehouses which constitute "the throat where tobacco enters the stream of commerce." Such restriction is a valid regulation of interstate commerce. It serves to foster, protect, and conserve that commerce and prevent the flow of commerce from working harm to the people of the nation. Second, the standard set up in the act for allotting farm quotas is not so uncertain and indefinite as to amount to an unconstitutional delegation of legislative power. Definite standards guide the Secretary, first in fixing the total amount, and second in allotting it amongst states and farms. There is, furthermore, both administrative and judicial review to protect the individual against arbitrary action and to correct errors. Third, there is no denial of due process of law in applying the quota limitations in the present case to a tobacco crop already planted before the statute was passed. The act does not forbid the planting of this tobacco, but merely restricts the sale of it at a given time. The producer may hold over the excess tobacco produced by processing or storing it for sale in a later year.

Mr. Justice Butler dissented in an opinion in which Mr. Justice McReynolds concurred. In his view, the appellant's property in the 1938 crop was taken without due process of law by the retroactive application of the statute, and the statute as a whole controls production in violation of the Tenth Amendment and invalidly delegates legislative power to the Secretary.

The Agricultural Marketing Agreement Act of 1937 was upheld by a divided Court in United States v. Rock Royal Coöperative.[7] The case

[6] United States v. Butler, 297 U.S. 1, 1936. See this REVIEW, Vol. 31, p. 254.
[7] 307 U.S. 533, 1939.

involved an order of the Secretary of Agriculture based upon the statute and regulating the handling of milk in the New York metropolitan area. Both the order and the statute were attacked. The basic policy of the statute is declared in its own words to be "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period." The Secretary of Agriculture is authorized to enter into marketing agreements with producers and others engaged in the handling of agricultural commodities. These agreements are entirely voluntary. In certain situations, however, the Secretary may issue orders instead of relying upon agreements, and this was done in the case of the milk industry. In issuing such an order, the Secretary must provide notice and hearing and incorporate in the order a finding that it will tend to accomplish the purpose of the statute. Such an order may be issued only if an effort to secure a voluntary marketing agreement has failed, and in such a case the order must be approved by two-thirds of the producers in the area subject to it. It is impossible to set forth here the details of the order involved in this case, or the many allegations that it exceeded the powers conferred upon the Secretary by the statute. It is sufficient to say that the order was issued in accordance with the procedure imposed by the act. It established a uniform price to be paid by the handlers of milk to the producers. It set up equalization pools to stabilize the prices received by producers. The act exempted producers coöperatives from the requirement of uniform price payments, and to these coöperatives were delegated certain powers to represent their members in referendum elections held upon the approval of the Secretary's order.

The Court's opinion, by Mr. Justice Reed, disposed of four constitutional objections as follows: First, Congress may authorize the fixing of minimum prices in the marketing of commodities which move across state lines. While the act of sale may be a local transaction, the commodities sold are articles of interstate commerce, and the entire enterprise is thus drawn within the sweep of the commerce power, and the act, therefore, does not violate the Tenth Amendment. Nebbia v. New York[3] held that a state might fix the price of milk without denying due process of law, and Congress enjoys the same power over milk in interstate commerce. Second, there is no denial of due process resulting from the unequal distribution of burdens in specific cases through the operation of the equalization pools. The pooling device is a reasonable method of exercising the regulatory power of Congress, and the pooling principle has been held

[3] 291 U.S. 502, 1934. See this REVIEW, Vol. 29, p. 45.

valid in the field of workmen's compensation,[9] bank deposit insurance,[10] and the distribution of benefits under the Transportation Act.[11] Third, the Court rejects the argument that the delegation of power to the Secretary was so extensive and so devoid of definite standards as to be invalid. The act gives the Secretary power to establish and maintain such orderly marketing conditions for agricultural commodities as will establish parity prices. This is a sufficiently definite standard to govern his discretion—a discretion which is to be exercised only after notice and hearing. Fourth, legislative power is not invalidly delegated to the producers of milk by allowing them to determine in a referendum whether the Secretary's order shall be effective, since Congress had power to put the order into effect without such consent.

Mr. Justice McReynolds and Mr. Justice Butler dissented on the ground that the act applied to local, and not to interstate, transactions, and therefore fell under the ban of the Schechter case. Also the act unconstitutionally delegates legislative power to the Secretary. In a separate opinion, Mr. Justice Roberts expressed the view that legislative power was invalidly delegated and that for various reasons the Secretary's order was not authorized by the statute.

In H. P. Hood and Sons v. United States,[12] the validity of the Agricultural Marketing Agreement Act was also involved in a case arising from an order of the Secretary of Agriculture regulating the handling of milk in the Greater Boston marketing area. The statute and the order were sustained in an opinion by Mr. Justice Reed following the lines of the preceding case, but paying rather more attention to the delegation of power to the Secretary and to the referendum conducted under his direction by the producers. Mr. Justice Roberts wrote a vigorous dissenting opinion attacking the statute on the ground of invalid delegation of legislative power to the Secretary.

(2) *National Labor Relations Board Cases.* Cases continue to come to the Supreme Court involving the scope and application of the National Labor Relations Act, the legality of the orders of the National Labor Relations Board, and the range of judicial review of such orders. In two cases, the constitutional problem was raised whether an order issued by the Board applied to labor relations falling clearly within the scope of the commerce power. This was the major issue in Consolidated Edison Company v. National Labor Relations Board.[13] The Board issued an order directing the Consolidated Edison Company to desist from certain unfair labor practices, to reinstate with back pay six discharged workmen,

[9] Mountain Timber Co. v. Washington, 243 U.S. 219, 1917.
[10] Noble State Bank v. Haskell, 219 U.S. 104, 1911.
[11] New England Divisions Case, 261 U.S. 184, 1923.
[12] 307 U.S. 588, 1939. [13] 305 U.S. 197, 1938.

and to publish appropriate notice of compliance. The company alleged that it was not engaged in interstate commerce and was not therefore subject to the statute. It did not sell for resale outside the state, and the overwhelming proportion of its business was the production of electric energy consumed in the state of New York, and particularly in New York City. Speaking through Chief Justice Hughes, the Court replied that while these statements were correct, the companies were producing electrical energy upon which most of the interstate commerce transacted in the New York metropolitan area depended. "There is undisputed and impressive evidence of the dependence of interstate and foreign commerce upon the continuity of the service of the petitioning companies." The Chief Justice quotes with approval from the lower court opinion describing the dire consequences which would ensue from a suspension of the business of the companies. "Instantly, the terminals and trains of three great interstate railroads would cease to operate; interstate communication by telegraph, telephone, and radio would stop; lights maintained as aids to navigation would go out; and the business of interstate ferries and of foreign steamships whose docks and lines are operated by electric energy would be clearly impeded." The Court held that Congress could properly avoid these consequences by providing through the National Labor Relations Act for the prevention of labor disputes in this industry. The Court found no lack of procedural due process in the issuance of the Board's order. Mr. Justice Butler and Mr. Justice McReynolds dissented from that portion of the opinion of the majority which held that the Consolidated Edison Company was engaged in interstate commerce. They relied upon the decisions in the Schechter case[14] and the Carter case.[15]

A similar constitutional issue arose in National Labor Relations Board v. Fainblatt.[16] Here an order of the Board directing cessation from unfair labor practices was issued against a firm located in New Jersey, operating what is known as a "contract shop" for the production of women's clothes. The fabrics used were supplied by the owners to the "contract shop" and transported from New York to New Jersey for the purpose of being processed. After being made into garments, they went out again across state lines into the channels of trade. The Court held that what appeared to be a purely local manufacturing process was in reality a link in a chain of interstate transactions. The business of the defendant was integrally tied in with the stream of interstate commerce, and accordingly was subject to the jurisdiction of the act and the order of the Board.

[14] Schechter Poultry Corp. v. United States, 295 U.S. 495, 1935. See this REVIEW, Vol. 30, p. 58.

[15] Carter v. Carter Coal Company, 298 U.S. 238, 1936. See this REVIEW, Vol. 31, p. 259. [16] 306 U.S. 601, 1939.

Two cases involved interpretations of the Wagner Act sufficiently important to be mentioned. National Labor Relations Board v. Fainsteel Metal Corporation[17] involved the question of the effect of participation in a sit-down strike upon the status and rights of workmen under the act. The employers were charged with repeated unfair labor practices. These resulted in a strike which developed into a sit-down strike that was finally ended by resort to force of law. The sit-down strikers were discharged by the company for their unlawful conduct. The National Labor Relations Board found the company guilty of the unfair labor practices which had produced the strike and ordered the reinstatement of the discharged men. This order covered the sit-down strikers and those outside the plant who had aided and abetted them. The Board justified its order on the ground that under the provisions of the Wagner Act workmen on strike as a result of unfair labor practices do not lose their status as employees, a provision designed to prevent employers from evading their obligations to striking employees by the simple device of discharging them. In an opinion by Chief Justice Hughes, the Board's order was set aside. The Court agreed that the company had engaged in unfair labor practices, but held that it did not, because of that fact, lose its normal right to discharge workmen guilty of trespass and sabotage. Congress did not intend to prevent the discharge of workmen for clearly unlawful conduct. If the statute were interpreted to prevent such discharge, serious questions would arise as to its constitutionality. The company, therefore, could not be compelled to reinstate either the sit-down strikers or those who had aided them. Furthermore, since these workmen had been lawfully discharged, the company was no longer bound to bargain collectively with the labor organization of which they formed a majority. Mr Justice Reed dissented in an opinion in which Mr. Justice Black concurred. He declared that Congress could validly prevent an employer from discharging his workmen during the course of a labor dispute for any reason, and that Congress had done this in the Wagner Act. That the workmen in this case were guilty of unlawful conduct was irrelevant to the question of their status as employees. All normal legal remedies are open to the company to protect them against trespass and sabotage. The judgment of the Court has the result, in a case where both employer and employees have been guilty of illegal conduct, of excusing the illegality of one because of the illegality of the other.

The case of National Labor Relations Board v. Sands Manufacturing Company[18] held that where an employer, after repeated efforts to bargain collectively with his employees, found that the negotiations had reached a deadlock in which neither party was willing to yield, he was free to reopen his plant with the aid of new men and discontinue efforts to bargain

[17] 306 U.S. 240, 1939. [18] 306 U.S. 332, 1939.

collectively with his former employees. Here the Board had ordered the company to discharge the new men, reinstate the old ones, and continue efforts to bargain collectively with the latter. Speaking through Mr. Justice Roberts, the Court held that the employer had exhausted the facilities open to him for collective bargaining, that the employees had struck in violation of a contract of employment, and that the statute imposed no further obligation on the employer to deal with the men. Justices Black and Reed dissented.

National Labor Relations Board v. Columbian E. & S. Company[19] raised the issue of the finality of the findings of fact of the National Labor Relations Board. The point in dispute was whether at a particular stage in the relations between the company and its men the company had refused overtures made by the men for the resumption of collective bargaining. The Board found that it had done so, and the Court, reviewing the evidence presented, found that it had not. A sharp dissenting opinion by Mr. Justice Black, concurred in by Mr. Justice Reed, shows that the issue was a very doubtful one. A similar point was involved in the Sands Manufacturing Company case just discussed. The position of the majority of the Court in these cases is that the fact determinations of the Board, in order to be entitled to finality, must be supported by evidence which is substantial. "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In view of the closeness of the question and the plausibility of the dissents, one is led to the conclusion, however, that the finality rule here stated means little more than that the Board's determinations of fact will be held conclusive when a majority of the Court agrees with them.

2. NATIONAL TAXATION

(1) *Federal Taxation of Judicial Salaries.* By the case of O'Malley v. Woodrough,[20] the salaries of the judges of the federal constitutional courts are no longer immune from federal income taxation. In Evans v. Gore,[21] such judicial salaries were held immune from federal taxation in the case of judges already in office when the tax was passed. In Miles v. Graham,[22] the immunity was extended to judges taking office after the effective date of the tax. In the present case, the salary of Judge Woodrough, a United States circuit judge, fell within the rule of Miles v. Graham. In a very brief opinion by Mr. Justice Frankfurter, the immunity doctrine is rejected. The substance of the opinion is in the following paragraph: " . . . the question immediately before us is whether

[19] 306 U.S. 292, 1939. [20] 307 U.S. 277, 1939.

[21] 253 U.S. 245, 1920. See comment by E. S. Corwin in this REVIEW (cited in the majority opinion), Vol. 14, p. 641.

[22] 268 U.S. 501, 1925. See this REVIEW, Vol. 20, p. 83.

Congress exceeded its constitutional power in providing that United States judges appointed after the Revenue Act of 1932 shall not enjoy immunity from the incidences of taxation to which everyone else within the defined classes of income is subjected. Thereby, of course, Congress has committed itself to the position that a non-discriminatory tax laid generally on net income is not, when applied to the income of a federal judge, a diminution of his salary within the prohibition of Article III, Sec. 1, of the Constitution. To suggest that it makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear the aliquot share of the cost of maintaining the government, is to trivialize the great historic experience on which the framers based the safeguards of Article III, Sec. 1. To subject them to a general tax is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow-citizens the material burden of the government whose Constitution and law they are charged with administering." Mr. Justice Frankfurter supported his position by the citation of numerous law review criticisms of the case of Evans v. Gore.

Mr. Justice Butler filed an elaborate dissenting opinion reviewing the arguments previously used by the Court in support of its earlier position and referring to utterances on the issue made by Chief Justice Taney, Attorney-General Hoar, Mr. Justice Miller, Attorney-General Olney, and others. The argument in support of the judicial immunity is that the protection extended by Article III to federal judges against diminution of compensation is absolute and complete. The issue is not whether imposing an income tax on a judicial salary diminishes the independence of the judge; it is the much simpler one of whether it diminishes the salary. After referring to the contrary opinions of the distinguished jurists just mentioned, Mr. Justice Butler pays his respects to Mr. Justice Frankfurter's authorities in these words: "The opinion also cites, footnote 7, selected gainsaying writings of professors—some are lawyers and some are not—but without specification of or reference to the reasons upon which their views rest, and in addition it cites notes published in law reviews, some signed and some not; presumably the latter were prepared by law students." The opinion ends on a plaintive note: "For one convinced that the judgment now given is wrong, it is impossible to acquiesce or merely to note dissent. And so this opinion is written to indicate the grounds of opposition and to evidence regret that another landmark has been removed."

3. CURRENCY—GOLD CLAUSE CASES

Two cases dealt with the effect of the Gold Clause Resolution of 1933 upon the so-called multiple currency provisions in bonds. In Guaranty

Trust Company v. Henwood,[23] mortgage bonds involved in a railroad bankruptcy reorganization contained a provision granting the holders an option to elect payment of the bonds in dollars, guilders, pounds, marks, or francs. The bondholders sought to enforce payment in Dutch guilders or the gold value equivalent thereof in legal tender currency. In an opinion by Mr. Justice Black, the Court refused to enforce this demand. The purpose and effect of the Gold Clause Resolution is reviewed. The Court held that the multiple currency provisions in question do not establish five separate and alternative obligations, but only one. The bond contract can therefore be fully satisfied by the payment of its fair value in legal tender dollars.

Mr. Justice Stone dissented in an opinion in which the Chief Justice and Justices McReynolds and Butler concurred. In his view, the bond contract called for payment in any one of the foreign currencies specified or its gold value. He compared it to a contract calling for delivery at the option of the contracting party of a cargo of sugar in lieu of a specified amount in legal tender dollars. This would be beyond the reach of the Gold Clause Resolution.

In Bethlehem Steel Corporation v. Zurich General Accident and Liability Insurance Co.,[24] multiple currency bonds were bought abroad and are now held by foreign corporations. The Court followed the preceding case on the applicability of the Gold Clause Resolution and held that the bonds are not outside the reach of the resolution because they were sold and held abroad.

III. JUDICIAL POWER

1. SUFFICIENCY OF INTEREST TO INVOKE JUDICIAL RELIEF

It is well established that those who seek to persuade the Court to pass upon the constitutionality of legislation or to enjoin the enforcement of a statute must clearly show that they as individuals have a specific and substantial interest sufficient to justify the Court in taking jurisdiction. In other words, they are not going to be listened to if their complaint is merely one which they share with all other citizens.

This doctrine was enforced in Tennessee Electric Power Company v. Tennessee Valley Authority.[25] The Tennessee Electric Power Company, joined by other power companies, sought an injunction to restrain the Tennessee Valley Authority from competing with them in the sale and distribution of electric power. They described the injuries which they would suffer from this competition. They demanded relief on the ground that the Tennessee Valley Authority is engaged in activities not authorized by any delegated federal powers, and therefore in violation of the Tenth Amendment, and is depriving them of their property with-

[23] 307 U.S. 247, 1939.
[24] 307 U.S. 265, 1939.
[25] 306 U.S. 118, 1939.

out due process of law by depriving them of their "guaranteed liberty to earn a livelihood and to acquire and use property subject only to state regulation." In an opinion written by Mr. Justice Roberts, the injunction is refused on two grounds. First, none of the power companies is operating under a franchise, state or federal, which gives it monopolistic privileges or protects it from competition. Therefore they are no more entitled to relief from the competition of a federal agency than from the competition of another private corporation. Second, since they have suffered no legal injury, they are without standing to challenge the validity of the governmental program involved in the Tennessee Valley enterprise. The Tenth Amendment protects the states from federal invasion of the area of reserve powers. But no state has challenged, under the Tenth Amendment, the validity of the Tennessee Valley statute. The sale of government property in competition with others is not a violation of the Tenth Amendment. "As we have seen, there is no objection to the Authority's operations by the states, and, if this were not so, the appellants, absent the states or their officers, have no standing in this suit to raise any question under the Amendment." The Court finds no evidence that the Tennessee Valley Authority has unlawfully conspired with Secretary Ickes as Administrator of the Federal Administration of Public Works to coerce the companies into selling their services to municipalities, or to force municipalities to purchase power from the Authority under threat of refusal of proposed loans and grants for municipal power services.

Mr. Justice Butler dissented on the ground that the companies may properly complain of the injuries which they have sustained, and that the Tennessee Valley enterprise violates the Tenth Amendment and deprives the companies of property without due process of law.

In California v. Latimer,[26] the Court refused to allow the state of California to be heard on a petition for an injunction to restrain the members of the Railroad Retirement Board and the Commissioner of Internal Revenue from enforcing against a state-owned railroad the provisions of the Railroad Retirement Acts of 1935 and 1937 and the Carrier Taxing Act of 1937. The state sought to plead state immunity with respect to its agency, the railroad, against the enforcement of these federal laws. The Court refused jurisdiction and declined to pass on the merits. There are established procedures for testing the constitutional applicability of these federal statutes, and there is no danger of irreparable injury if that course is pursued.

An interesting problem relating to the Court's jurisdiction, not to mention other problems so interesting as to verge on the bizarre, was involved in the case of Texas v. Florida.[27] This case arose out of the attempts of four states to levy death duties upon the estate of Edward H. R. Green,

[26] 305 U.S. 255, 1938. [27] 306 U.S. 398, 1939.

the son of the famous Hetty Green. Mr. Green died in 1936, leaving a gross estate of some $44,000,000, comprising real estate and tangible personal property located in Texas, New York, Florida, and Massachusetts valued at about $6,000,000, and the balance in stocks, bonds, and securities most of which were kept in New York. Each of the four states proceeded independently on the assumption that it had jurisdiction of the intangible estate by reason of the domicile of Mr. Green within its borders. None of the states was deterred in its efforts to collect in full its death duties by the fact that three other states and the federal government were engaged in the same enterprise. The net value of the estate was found to be about $36,000,000. Had each of the four states and the federal government collected the taxes claimed under their respective laws, the total tax bill would have been nearly $38,000,00, or $1,750,000 more than the value of the estate.

In this situation, the state of Texas invoked the original jurisdiction of the Supreme Court to determine the true domicile of Mr. Green and to adjudicate the rival claims of the four states to tax his estate. It sought relief on the ground that if the other states were not restrained from proceeding with the collection of the proposed taxes under their laws, the estate would be so depleted as to prevent the satisfaction of the tax claim of the state of Texas.

In an opinion by Mr. Justice Stone, the Court took jurisdiction and decided in which state Mr. Green had his domicile. It may be added that it worked in this complicated mass of conflicting claims with the aid of an expert master. The Court found valid basis for the exercise of its judicial power and the acceptance of the petition for relief in equity. "The risk that the decedent's estate might constitutionally be subjected to conflicting tax assessments in excess of its total value and that the right of complainant or some other state to collect the tax might thus be defeated was a real one, due both to the jurisdictional peculiarities of our dual federal and state judicial systems and the special circumstances of this case." The Court pointed out that two or more states may each validly assess death taxes upon the intangible property left by a decedent, and that a judgment that he was domiciled in a particular state is binding on the parties to the suit and is constitutionally entitled to full faith and credit in the courts of every other state. "In this case, . . . the relations of the decedent to each of the demanding states was such as to afford substantial basis for the claim that he was domiciled within it, with fair probability that the claim would be accepted and favorably acted upon if there were no participation by the other states in the litigation." Having thus taken jurisdiction, the Court, relying upon the findings of a master, held that Mr. Green's legal domicile was in Massachusetts.

Mr. Justice Frankfurter filed an opinion attacking the jurisdiction of

the Court. It is not to be presumed that any of the four states would enforce its tax claims in violation of the law, and therefore no case was presented in which the Supreme Court could properly take jurisdiction and afford relief in equity.

2. IMMUNITY OF FEDERAL AGENCIES FROM SUIT

Keifer and Keifer v. Reconstruction Finance Corporation[28] raised the question whether a regional Agricultural Credit Corporation, a subsidiary of the Reconstruction Finance Corporation, is immune from suit. The Court held that while Congress could extend this immunity to a government-owned corporation, the immunity would not be implied unless Congress expressly created it. Government-owned corporations in general, including the Reconstruction Finance Corporation, had been subjected to suit by statute. There is no reason to believe that Congress intended to deal differently with the Regional Agricultural Credit Corporation. The Court held that the corporation was liable to suit, not merely in cases arising in contract, but also in cases arising in tort, as in this case. If Congress wished to limit the liability of the corporation to cases of contract, it could easily do this by express language. The Court mentioned the general trend toward liberalizing the old doctrine that government agencies of this variety share the immunity from suit enjoyed by the sovereign.

3. ADMINISTRATIVE LAW—REVIEW OF ADMINISTRATIVE AGENCIES

Several cases deal with problems in the field of administrative law. In Shields v. Utah Idaho Central R. Company,[29] the Court upheld the finality of the determination of the Interstate Commerce Commission that the railroad, for purposes of the Railway Labor Act, is not an interurban railway. Interurban roads are not subject to the statute unless they operate as part of a general steam-railroad system of transportation. The District Court permitted trial *de novo* of the Commission's finding and reached an opposite result. The Court held that the Commission had acted within its authority, that its finding that the railroad was not an interurban railroad was not arbitrary or capricious, and that the District Court erred in reviewing the merits.

In Ford Motor Company v. National Labor Relations Board,[30] the Court permitted the Board to withdraw a proceeding against the Ford Motor Company from the jurisdiction of the Circuit Court of Appeals and allowed it to resume control of the administrative procedure. The Board had learned from decisions of the Supreme Court that some of its procedures were defective in law, and it desired to withdraw the action

[28] 306 U.S. 381, 1939. [29] 305 U.S. 177, 1938.
[30] 305 U.S. 364, 1939.

against the Ford Motor Company in order that correct procedure might be followed from the beginning. The Supreme Court permits this. Instead of setting aside the Board's findings, the Court permits the Board itself to set them aside. Permission to do so must, of course, be given by the court in the exercise of judicial discretion. This requirement was met in the present case. "There is nothing in the statute, or in the principles governing judicial review of administrative action, which precludes the court from giving a body an opportunity to meet objections to its orders by correcting errors in procedure, or supplying deficiencies in its record, or making additional findings where these are necessary, or supplying findings validly made in the place of those attacked as invalid."

The National Bituminous Coal Commission directed certain producers of coal to file detailed information as to cost of tonnage and prices derived from sale. The order requesting these facts indicated that the information would be held confidential. Later the Board, in a proceeding to determine "the weighted average of total cost of the tonnage coal in the calendar year," announced that the information previously collected would be made public in the record. In Utah Fuel Company v. National Bituminous Coal Commission,[31] the Court held that the injury threatened by this disclosure justified the complainants in seeking relief in equity. It held, however, that Congress could properly require coal producers to disclose the information which had been secured, and that the Commission had not acted in excess of its powers under the statute in the procedure followed.

In an opinion by Mr. Justice Frankfurter, in the case of Rochester Telephone Corporation v. United States,[32] the Court discarded the doctrine of many earlier cases based upon a distinction between "negative" and "affirmative" orders of administrative agencies. The doctrine of negative orders denied to the courts jurisdiction to review an order of an administrative body refusing to grant an authority, privilege, or license possibly available under the law. Where the orders were affirmative in the sense that they imposed obligations or restrictions, the jurisdiction to review was of course unquestioned. The negative order doctrine assumed that the refusal to grant a privilege, authority, or license was an act performed in the discretion of the administrative body, and that a reviewing court could not therefore, if it differed with the administrative agency on the merits, itself confer the authority, license, or privilege, since to do so would be an exercise of non-judicial power. The Court abandons this distinction "as a touchstone of jurisdiction to review the Commission's orders." It states that the judicial review of administrative orders should be governed, first, by the doctrine of primary jurisdiction, which provides "that matters which call for technical knowledge per-

[31] 306 U.S. 56, 1939. [32] 307 U.S. 125, 1939.

taining to transportation must first be passed upon by the Interstate Commerce Commission before a court can be invoked," and second, by the doctrine of administrative finality, which holds that "so long as there is warrant in the record for the judgment of the expert body it must stand." In the present case, the company was entitled to a review of an order of the Federal Communications Commission refusing it permission to acquire another system even though this was a negative order. It was, however, not entitled to relief on the merits, since the record amply justified the Commission in making its findings. The new doctrine was applied also in the case of United States v. Maher,[33] in which the Interstate Commerce Commission had issued an order refusing to Maher a certificate of convenience and necessity to operate an interstate bus line. Again the Court took jurisdiction, but refused relief on the merits.

In Federal Power Commission v. Pacific Power and Light Company,[34] a somewhat similar result was reached.

IV. FEDERAL BILL OF RIGHTS AND CIVIL LIBERTY

1. THE RIGHT TO BEAR ARMS

The Second Amendment provides: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Is the right protected by this amendment infringed by the provision of the National Fire Arms Act of 1934 making it a felony to ship in interstate commerce an eighteen-inch shotgun not previously registered and taxed? A federal district court had held that it was. In United States v. Miller,[35] the Supreme Court, speaking through Mr. Justice McReynolds, held the act valid. The reason for protecting the right to bear arms is to aid in maintaining a well regulated militia. The arms which one is entitled to possess are those which could be used for this purpose. "In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense."

2. EX POST FACTO LAWS

An interesting problem under the *ex post facto* clause arose in United States v. Powers.[36] The Connally Hot Oil Act of 1935 forbade interstate shipments of "hot oil." It contained a provision that "this act shall cease

[33] 307 U.S. 148, 1939.
[34] 307 U.S. 156, 1939.
[35] 307 U.S. 174, 1939.
[36] 307 U.S. 214, 1939.

to be in effect on June 16, 1937." On June 14, 1937, the act was amended by striking out "June 16, 1937," and putting in its place "June 30, 1939." No other changes were made. The defendants violated the act prior to June 16, 1937, but were not prosecuted until after that date. They alleged that the new statute as applied to them was *ex post facto*, since, had it not been passed, the original act would have expired by limitation before the date upon which they were indicted, thereby making that indictment impossible. Speaking through Mr. Justice Douglas, the Court upheld the act. The original act never did expire, and the new act made no change in the nature of the offense or its punishment. Congress intended to treat the act as though it had been originally passed to expire in 1939, and it did not intend to waive or to pardon violations which occurred before June 16, 1937, but which were not prosecuted until later.

V. THE TWENTY-FIRST AMENDMENT AND STATE LIQUOR CONTROL

Two cases arose under the Twenty-first Amendment. A Michigan statute forbade Michigan liquor dealers to sell beer manufactured in a state which by its laws discriminates against Michigan beer. Under this statute, the Michigan Liquor Control Commission named ten discriminating states, one of which was Indiana. In Indianapolis Brewing Company v. Liquor Control Commission,[37] the plaintiff attacked the Michigan act as an unconstitutional restriction upon interstate commerce, and a denial of equal protection of the laws and of due process of law. None of these contentions prevailed. The Court held the state law valid, since as a result of the Twenty-first Amendment the right of a state to prohibit or regulate the importation of intoxicating liquor is not limited by the commerce clause. The discrimination between domestic and imported liquors, or even between imported liquors, does not deny the equal protection of the laws. There is no denial of due process, in view of the undoubted right of the state to prevent completely the sale of intoxicating liquor. A similar result was reached in Joseph S. Finch and Company v. McKittrick.[38]

VI. STATUTORY CONSTRUCTION—CITIZENSHIP AND DEPORTATION OF ALIENS

A very important case relating to the acquisition of United States citizenship is the case of Perkins v. Elg.[39] Miss Elg was born in the United States of Swedish parents in 1907. Her father had been naturalized in this country in 1906. In 1911, her mother took her to Sweden, where she continued to reside until 1929. Her father returned to Sweden in 1922 and has not since come back to the United States. In 1934, he declared before

[37] 305 U.S. 391, 1939. [38] 305 U.S. 395, 1939.
[39] 307 U.S. 325, 1939.

an American consul in Sweden that he had voluntarily expatriated himself and wished to preserve his allegiance to Sweden. Shortly before reaching the age of twenty-one, Miss Elg planned to return to the United States and was told by an American consul in Sweden to seek an American passport for that purpose. In 1929, being then twenty-one years of age, she obtained such a passport, came to the United States, and has resided here ever since. In 1935, she was notified by the Department of Labor that she was an alien illegally in the country and was threatened with deportation. The major issue presented is whether the repatriation of her parents in Sweden during her minority deprived her of the right to elect American citizenship upon reaching the age of twenty-one. The Court, in a unanimous opinion by Chief Justice Hughes, upheld Miss Elg's claim to American citizenship. The opinion is as follows: First, Miss Elg became a citizen of the United States by being born in New York. This would have been true even had her parents at that time been aliens, which they were not. Second, a long series of administrative rulings by attorneys-general and secretaries of state hold that a child born in this country and taken during his minority to the country of his parents' origin does not lose his right to elect American citizenship at the age of twenty-one because his parents meanwhile have resumed a former allegiance to another country. These rulings are persuasive as to the correct interpretation of the statutes. Miss Elg accordingly possessed this right of election of American citizenship unless it had been destroyed by treaty or by statute. Third, an examination of our treaty with Sweden of 1869 reveals no intention upon the part of the two countries to destroy this right of election. Fourth, this right has not been destroyed or limited by the act of 1907. This statute provides that an American citizen expatriates himself by naturalizing in a foreign country or taking an oath of allegiance to a foreign state. It also provides that when a naturalized citizen resides for two years in the country from which he came, or for five years in any other one, he shall be presumed to have ceased to be an American citizen. The Department of Labor argued that since Miss Elg's father had lost his American citizenship and reclaimed his Swedish citizenship, under the operation of this statute she, as a minor, had also become a Swedish citizen. The Court refused to construe the statute as depriving a minor child, born an American citizen, of the statutory right of election at the age of twenty-one. While under the rule thus established "dual nationality" is possible, the Court insists that the relinquishment of the right to enjoy the status of American citizenship upon coming of age should be the voluntary act of the child, and that that right is not destroyed by a change in the status of the child's parents. This, as a matter of fact, had been the policy of the Department of State as late as 1925. Miss Elg acted promptly in exercising her election of American citizenship

under the statute upon attaining her majority. She has continued to reside in this country since doing so, and the Court concluded that she has not lost her citizenship in the United States.

The case of Kessler v. Strecker[40] aroused much public interest. The Department of Labor sought to deport Strecker on the ground of his membership in the Communist party. Strecker had been a member of the Communist party, but he had given up his membership before deportation proceedings were started against him and had never renewed that membership. The Court, speaking through Mr. Justice Roberts, held that he was not liable under the statute to deportation. The government relied upon the provision of the act of 1918, as amended by the act of 1920, which reads: "Any alien who, at any time after entering the United States, is found to have been at the time of entering, or to have become thereafter, a member of any one of the classes of aliens enumerated" shall be deported. It is admitted that present membership in the Communist party constitutes legal cause for exclusion from the country and for deportation. The statute is certainly ambiguous. It appears to declare that an alien may be deported if he becomes a member of the Communist party even for a brief period after his admission. The Court, however, rejected this interpretation and held that Congress meant by the provision to authorize the deportation only of aliens who at the time of deportation are members of the Communist party. This view is supported by the fact that the immigration laws do not bar the admission of one who has been, but no longer is, a Communist. "We conclude that it is the present membership, or present affiliation—a fact to be determined on evidence—which bars admission, bars naturalization, and requires deportation."

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. DUE PROCESS OF LAW

(1) *Civil Rights.* A case of intrinsic importance, as well as great public interest, is that of Hague v. C.I.O.,[41] in which various repressions of civil liberty exercised by Mayor Hague and other officers of Jersey City were held to abridge without due process of law the liberty protected by the Fourteenth Amendment. There was a striking lack of unanimity upon the part of the justices. Justices Frankfurter and Douglas did not participate. Mr. Justice Roberts wrote the leading opinion, in which Mr. Justice Black joined. Mr. Justice Stone concurred in an opinion in which Mr. Justice Reed joined. Chief Justice Hughes wrote a separate concurring opinion. Justices McReynolds and Butler wrote separate dissent-

[40] 307 U.S. 22, 1939. [41] 307 U.S. 496, 1939.

ing opinions. The case was argued and briefs filed on behalf of the respondents by an impressive array of counsel, including the Committee on the Bill of Rights of the American Bar Association.

It is important to an understanding of the case to know what had been going on in Jersey City. Members of the C.I.O. and others associated with them in labor union activities had undertaken to carry on their work in that municipality. Later, these were joined by various persons interested in vindicating the rights of freedom of speech, press, and assembly who came in from the outside and undertook to conduct meetings and distribute literature. The charges brought by the C.I.O. were as follows: A city ordinance of Jersey City forbade the leasing of any hall without a permit from the chief of police for any meeting at which a speaker should advocate obstruction of the government of the United States or of a state or a change of government by other than lawful means. The chief of police of Jersey City, acting under this ordinance, denied the C.I.O. the right to hold lawful meetings in Jersey City on the ground that the C.I.O. members were Communists or comprised Communist organizations. The officials refused to allow meetings to be held in the streets and public parks. They evicted from the city persons whom they considered undesirable because of their labor union activities, and announced that they would continue to do so. Acting under an ordinance forbidding any person to "distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card, or pamphlet," the city officers discriminated against the respondents by preventing their distributing leaflets and pamphlets while permitting others to do so. They also caused the respondents to be arrested for distributing printed matter in the streets, caused them to be carried beyond the limits of the city or to remote places therein, and compelled them to board ferry boats destined for New York. They prevented the distribution of pamphlets discussing rights arising under the National Labor Relations Act. They unlawfully seized persons coming into the city and seized matter in their possession. They threatened that if the respondents attempted to hold public meetings in the city to discuss rights afforded by the National Labor Relations Act, they would be arrested. The respondents sought a permanent injunction preventing these repressive activities on the ground that they deprived the respondents of rights and privileges guaranteed them by the Constitution of the United States.

In the opinion by Mr. Justice Roberts, it is pointed out, first, that the district court properly assumed jurisdiction in spite of the allegation that the sum of $3,000 was not involved, since the federal statute authorizes suits in equity to redress the deprivation, under color of the law of any state, of any right, privilege, or immunity secured by the Consti-

tution of the United States. The rights involved are secured by the Fourteenth Amendment. A second important issue is whether any of the civil liberties alleged to have been invaded constitute privileges and immunities of citizens of the United States which the states by the Fourteenth Amendment are forbidden to abridge. Mr. Justice Roberts held that the right of peaceable assembly for the purpose of petitioning for redress of grievances is a privilege or immunity of United States citizenship, and that it includes the right to meet and discuss national legislation and the benefits, advantages, and opportunities which citizens enjoy thereunder. It is interesting that Mr. Justice Roberts preferred to invoke the privileges and immunities clause in this connection rather than the due process clause. In the third place, he finds that the invasions of liberty charged cannot be defended as valid police regulations. He makes the following important statement: "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." The city ordinance restricting the use of the streets or parks is void on its face, since it allows the Director of Safety to refuse permits for public meetings on his mere opinion that such refusal will prevent riots, disturbances, and disorderly assemblages. The Circuit Court of Appeals had found that unreasonable searches and seizures had taken place, and that the prohibition against such searches and seizures in the Fourth Amendment was one of the privileges and immunities of citizens of the United States protected against state abridgment by the Fourteenth Amendment. Mr. Justice Roberts held that this went beyond the necessities of the case and that there was no occasion for deciding as a matter of law whether exemption from unreasonable searches and seizures is a privilege or immunity of citizens of the United States. The Court held invalid the ordinance under which the various repressive acts had been justified, and enjoined its enforcement. It refused, however, to "rewrite the ordinance," as the decree of the lower court had substantially done.

Mr. Justice Stone agreed with the result, but disagreed sharply with the Court's reasoning. He held that freedom of speech, press, and lawful assembly, which had been infringed, are rights of personal liberty guar-

anteed to all persons, regardless of citizenship, by the due process clause of the Fourteenth Amendment. None of these civil liberties has ever been held to be a privilege or immunity peculiar to citizenship of the United States, and, restating the views expressed by him in the case of Colgate v. Harvey,[42] Mr. Justice Stone rejected the privileges and immunities clause as a basis for the present decision. Even if it be assumed (and this is doubtful) that the right to assemble to discuss rights under the National Labor Relations Act is a privilege secured by the privileges and immunities clause to citizens of the United States but not to others, there arises the difficulty, first, that there is no finding that those whose rights have been infringed are in fact citizens, nor any finding that any of the meetings were called particularly to discuss, or did in fact discuss, the National Labor Relations Act. The repressive acts under review were clear violations of the due process clause, which protects aliens and citizens alike, and that clause provides the proper basis for the Court's decision. "If it be the part of wisdom to avoid unnecessary decision of constitutional questions, it would seem to be equally so to avoid the unnecessary creation of novel constitutional doctrine, inadequately supported by the record, in order to attain an end easily and certainly reached by following the beaten paths of constitutional decision."

Chief Justice Hughes wrote a brief opinion concurring in the findings, agreeing that the right to discuss the National Labor Relations Act is a privilege of a citizen of the United States, but agreeing with Mr. Justice Stone as to the impropriety of grounding the decision upon that argument. Justices McReynolds and Butler each dissented on the ground that the challenged ordinance was within the proper range of local police power.

It is well established that a penal statute is void under the due process clause if it is vague and uncertain in its provisions. Under this doctrine, the Court, in Lanzetta v. New Jersey,[43] invalidated the New Jersey "Anti-Gangster Law" of 1934. The act provided: "Any person not engaged in any lawful occupation, known to be a member of any gang of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in this or any other state, is declared to be a gangster. . . ." Each violation of the statute forbidding one to be a gangster is punishable by not more than $10,000 or twenty years, or both. In an opinion by Mr. Justice Butler, the Court found the meaning of the term "gang" uncertain and elusive. Nor is the statute clear and specific when it uses the phrase "any person not engaged in any lawful occupation," and the phrase "known to be a member." It is therefore fatally vague. "No one may be required at

[42] 296 U.S. 404, 1935. See this REVIEW, Vol. 32, p. 296.
[43] 306 U.S. 451, 1939.

peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids."

(2) *Police Power.* In a brief opinion rendered *per curiam*, the Court found no denial of due process in a state police regulation establishing a so-called well-spacing statute applicable to oil. A commission was empowered to fix the boundaries of the common source of oil supply in certain areas, and did so by setting up ten-acre units. Where these ten-acre units comprised tracts owned by several people, the total oil drawn from the unit was pro-rated according to the acreage of the separate tracts. This was to prevent one owner from drawing off more than his share of the common supply under the entire area. The Court found no lack of procedural due process nor any arbitrary invasion of private property rights. This is the case of Patterson v. Stanolind Oil & Gas Co.[44]

(3) *Public Utility Rates.* The case of Driscoll v. Edison Light and Power Company[45] upheld rates fixed by the Pennsylvania public utility commission. One point in the case merits comment. The statute under which the commission acted authorized it to fix temporary rates for public utility services based upon the single factor of original cost less depreciation. This was attacked upon the ground that the statute did not require the commission to use the reproduction cost doctrine established in the c se of Smyth v. Ames.[46] Speaking through Mr. Justice Reed, the Court rejected this argument, since there was no evidence that the commission had omitted any necessary element in determining the fair valuation of the utility's property. There was nothing to show that the commission had not acted upon the doctrine of reproduction cost in establishing the challenged rates. Mr. Justice Frankfurter concurred, but sharply attacked the Court's opinion because it "appears to give vitality needlessly to the mischievous formula for fixing utility rates in Smyth v. Ames . . . The force of reason, confirmed by events, has gradually rendered that formula moribund by revealing it to be useless as a guide for adjudication. Experience has made it overwhelmingly clear that Smyth v. Ames and the uses to which it has been put represented an attempt to erect temporary facts into legal absolutes." This discredited rule certainly ought not to be invoked unnecessarily, and the present case could have been disposed of without reference to it.

(4) *Taxation.* In Welch v. Henry,[47] a divided Court held valid a Wisconsin statute of 1935 imposing a tax on corporate dividends received by the appellant in 1933. This retroactive tax was held not to deny either due process or equal protection. Under the statute in force in 1933, the appellant was exempt from the payment of a tax on corporate dividends.

[44] 305 U.S. 376, 1939.
[45] 307 U.S. 104, 1939.
[46] 169 U.S. 466, 1898.
[47] 305 U.S. 134, 1938.

The retroactive statute removed this exemption and imposed a tax on the dividends received during the two preceding years. The Court distinguished this from certain other retroactive taxes which have been held to deny due process of law. Retroactive taxation of gifts was held void in Nichols v. Coolidge,[48] on the ground that the nature and amount of the tax could not reasonably have been anticipated by the taxpayer at the time of the voluntary act which the statute later made taxable. The donor might have withheld his gifts had he known that they were to be taxed. The corporate dividends in this case, however, would have been received by the taxpayer whether he knew they were to be taxable or not. He is not, therefore, deprived by the retroactive statute of any opportunity by his voluntary act to avoid the taxation. He has suffered no deprivation of property without due process of law. Nor is the classification arbitrary by which this group of taxpayers was singled out.

In a dissenting opinion, Mr. Justice Roberts charged arbitrary discrimination amounting to a denial of equal protection. While the appellants could be subjected to the tax had it not been retroactive, the discrimination by which they are singled out for retroactive taxation is constitutionally indefensible.

In Curry v. McCanless,[49] the Court establishes the doctrine which it has been forecasting in earlier cases, namely, that the multiple taxation of intangible personal property does not necessarily deny due process of law. In this case, Mrs. McCanless, who lived in Tennessee, created a trust by which certain stocks and bonds were transferred to a trust company doing business in Alabama. This trust provided for the ultimate disposition of the trust property, but reserved to her the power to remove the trustees, to direct the sale of the trust property, to invest the proceeds, and to dispose of the trust estate by will. By her will she bequeathed the trust property in different amounts and by different estates from those which were provided for in the trust indenture. The will was probated both in Tennessee where she was domiciled and in Alabama where the securities were held. Speaking through Mr. Justice Stone, the Court held that both states could properly tax the transmission of this property by inheritance. In an interesting opinion, he traces the development of the rule that tangible property is taxable only at its situs, and the rule that intangibles are taxable at the domicile of the owner. Neither of these formulae has any intrinsic sanctity. They are but adaptations to particular fact situations of the general doctrine that "all subjects over which the sovereign power of a state extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation." Confusion arises from thinking of intangibles as

[48] 274 U.S. 531, 1927. See this REVIEW, Vol. 22, p. 81.
[49] 307 U.S. 357, 1939.

analogous to tangible property. Intangibles are not objects or things. They are rights which are not related to physical things. They are relationships between persons "which the law recognizes by attaching to them certain legal sanctions enforceable in courts." Obviously, such relationships may exist in more than one place. Mr. Justice Stone summarizes his result and its supporting theory as follows: "But when the taxpayer extends his activities with respect to his intangibles so as to avail himself of the protection and benefit of the law of another state, in such a way as to bring his person or property within the reach of the tax-gatherer there, the reason for a single place of taxation no longer obtains. . . . It is undeniable that the state of domicile is not deprived by the taxpayer's activities elsewhere, of its constitutional jurisdiction to tax, and consequently . . . there are many circumstances in which more than one state may have jurisdiction to impose a tax. In the present case, the passing of the property in the hands of the trustees in Alabama under the provision of the testator's will was a taxable event in Alabama. Her power to dispose of her intangibles was a potential source of wealth protected by the law of Tennessee in which state she lived. It was, therefore, an interest or right properly taxable there. Nothing in the Fourteenth Amendment, and nothing in reason or principle, justifies prohibiting either state in the circumstances from laying its respective tax."

Mr. Justice Butler dissented in an opinion concurred in by Chief Justice Hughes and Justices McReynolds and Roberts. Relying upon previously decided cases, particularly Farmers' Loan and Trust Company v. Minnesota,[50] it is asserted that the due process clause of the Fourteenth Amendment forbids both states to impose transfer taxes in respect of the same property. Graves v. Elliott[51] follows the preceding case by a similarly divided Court.

II. EQUAL PROTECTION OF THE LAWS

In Missouri *ex rel.* Gaines v. Canada,[52] the Court stiffens protection enjoyed by Negroes against racial discrimination. Gaines, a Negro, was refused admission to the school of law of the University of Missouri. Missouri does not support a law school for Negroes, or admit them to the University of Missouri. It does support Lincoln University, which is open to Negroes but has no law school. A Missouri law provides, however, that a Negro citizen of Missouri wishing to study law in the state university and eligible scholastically to do so will receive from the state reasonable tuition fees for attendance at the law school of the university of any adjacent state which will take him in. Gaines refused to accept this tuition grant and asserted his constitutional right to be admitted

[50] 280 U.S. 204, 1930. See this REVIEW, Vol. 25, p. 90.
[51] 307 U.S. 383, 1939. [52] 305 U.S. 337, 1938.

to the law school of the University of Missouri. Since Plessy v. Ferguson,[53] it has been clear that in the exercise of their police powers states may separate the two races in the enjoyment of the facilities of common carriers, hotels, restaurants, and places of amusement, and may require the education of whites and blacks in separate schools. But it is equally well established that if the two races are thus segregated, the accommodations given to each must be substantially equal. The cases in which this equality has been at issue indicate a certain degree of leniency upon the part of the Court in permitting the Southern states to accord to Negroes accommodations not entirely equal to those provided for white persons. However, in McCabe v. A. T. & S. F. R. Company[54] the Court held that Pullman accommodations on a railroad could not validly be denied to Negroes if they were made available to white persons.

In the present case, the state plausibly argued that there had been no substantial demand for a Negro law school, that the state intends to establish one should there be adequate demand, and that the financial assistance extended to Negro students to enable them to attend the law schools of neighboring states provides them with substantially equal educational facilities. The Court, speaking through Chief Justice Hughes, rejected this contention and held in effect that Missouri must either provide a law school for Gaines to attend or admit him to the law school of the University of Missouri. The constitutional right which he is asserting is a personal one, and its abridgment is not justified by the fact that no one else is asserting a like right. Nor can its denial be justified on the ground that it is temporary. The net result is that "by the operation of the laws of Missouri a privilege has been created for white law students which is denied to Negroes by reason of their race. This abridges the equal protection clause of the Fourteenth Amendment."

Mr. Justice McReynolds and Mr. Justice Butler dissented. In this opinion, it is said: "The problem presented obviously is a difficult and highly practical one. A fair effort to solve it has been made by offering adequate opportunity for study when sought in good faith. The state should not be unduly hampered through theorization inadequately restrained by experience."

In Pierre v. Louisiana,[55] the Court reaffirmed with some elaboration its ruling in Norris v. Alabama[56] that the systematic exclusion of Negroes from the grand and petit juries by which Negroes were indicted and tried denied the equal protection of the laws. The evidence establishing the fact of exclusion because of race was the same here as in the Norris case. The trial judge quashed the petit jury panel on grounds of the racial discrimination, but refused to quash the grand jury panel because "the

[53] 163 U.S. 537, 1896. [54] 235 U.S. 151, 1914. [55] 306 U.S. 354, 1939.
[56] 294 U.S. 587, 1935. See this REVIEW, Vol. 30, p. 83.

constitutional rights of the defendant are . . . not affected by reason of the fact that persons of the colored or African race are not placed on the grand jury, because . . . the mere presentment of an indictment is not evidence of guilt." The Court held that "principles which forbid discrimination in the selection of Petit Juries also govern the selection of Grand Juries."

III. FIFTEENTH AMENDMENT

After Oklahoma entered the Union, it adopted suffrage provisions which set up a literacy test for the right to vote. White voters were relieved of this literacy test by the operation of a "grandfather clause." This suffrage provision was held to violate the Fifteenth Amendment in Guinn v. United States,[57] decided in June, 1915. In the meantime the general election of 1914 had been conducted under the operation of the offending "grandfather clause." In 1916, the legislature, to meet the mandates of the Guinn decision, passed a new suffrage law. By its provisions, those who had voted in the 1914 election remained automatically qualified to vote. All others were required to register between April 30, 1916, and May 11, 1916, with an extension of time to June 30, 1916, for those sick or out of the state during the earlier twelve-day period. In Lane v. Wilson,[58] this provision was also held to violate the Fifteenth Amendment. Lane, though qualified to register in 1916, did not do so during the statutory period, and was therefore denied the right of registration on his demand in the election of 1934. Speaking through Mr. Justice Frankfurter, the Court held that invalid discrimination against Negroes resulted from granting voting privileges for life to the white citizens "sheltered" by the "grandfather clause," while subjecting colored citizens to the restriction of a single twelve-day period during which they might establish voting privileges. "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination."

IV. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

Two cases arose under the contract clause. In Higgenbotham v. Baton Rouge,[59] the Court applied the well established doctrine that the contract clause does not protect a public officer from the abolition of his office or the shortening of its tenure. The legislature abolished the office of superintendent of public parks and streets in Baton Rouge. The appellant who had held the office had no contract which bound the state, and was not protected by the contract clause.

There is no impairment of the obligation of a contract in a legislative change in the remedy under the contract so long as the change does not impair substantial rights. Under the New York Civil Practice Act of 1933, a mortgagee of real property is denied a deficiency judgment in a

[57] 238 U.S. 347, 1915. [58] 307 U.S. 268, 1939. [59] 306 U.S. 535, 1939.

foreclosure suit when the value of the property he purchases at the foreclosure sale equals in value the debt secured by the mortgage. This was held valid in Honeyman v. Jacobs.[60] Here a debt of $15,000 was secured by mortgage on real estate. At the foreclosure sale, the mortgagee bought the property, valued at $25,000, for $7,500 and claimed a deficiency judgment for the difference between $7,500 and $15,000 plus costs. The statute, passed after the contract had been made, denied the right to the deficiency judgment and was held by the Court, in an opinion by Chief Justice Hughes, not to impair the obligation of the contract. The change in remedy deprived the mortgagee of nothing the contract intended that he should have.

V. STATE AND FEDERAL RELATIONS

(1) *State Police Power and Interstate Commerce.* State police regulations which impinge upon interstate commerce continue to be found valid when they result in no substantial burden upon that commerce. The most interesting case presenting this issue is Milk Control Board v. Eisenberg Farm Products.[61] A Pennsylvania statute of 1935 declared the milk business to be affected with a public interest and authorized a milk control board to regulate those who purchase or handle milk within the state for sale, shipment, storage, processing, or manufacture within or without the state. The regulations included the requirement of a license to do business, the filing of a bond to secure prompt payment of amounts due to producers for milk purchased, and minimum prices to be paid to producers for milk. In this case, the company buys milk in Pennsylvania which is brought to its receiving plant at which, without being processed in any way, it remains less than twenty-four hours before being shipped to New York, where it is sold. The company sells no milk in Pennsylvania, and it attacked the statute as a burden upon interstate commerce. Speaking through Mr. Justice Roberts, the Court rejected this contention. In the absence of congressional regulation, the states may deal with those phases of interstate commerce which do not require uniform national treatment as long as the burdens thus imposed on interstate commerce are indirect and incidental. The activity affected by the state's regulation is essentially local in Pennsylvania. The state does not control transportation of the milk out of the state nor the price at which it is sold in New York. The burden upon the company's interstate business is incidental and unsubstantial, and the state statute, until superseded by federal law, may validly be enforced against the company. Justices McReynolds and Butler thought the act invalidly burdened interstate commerce.

Under authority of the Federal Motor Carrier Act of 1935, the Interstate Commerce Commission promulgated regulations as to hours of

[60] 306 U.S. 539, 1939. [61] 306 U.S. 346, 1939.

labor of drivers of motor vehicles operated in interstate commerce. These were to go into effect in January, 1939. While these would supersede state regulations covering the same subject-matter, the Court held in H. P. Welch Co. v. New Hampshire[62] that the mere grant of power to the commission to issue the regulations did not supplant otherwise valid state laws fixing maximum hours of labor of drivers operating on the state highways. Such a state law remained in effect until the commission's rule became operative in 1939.

A trucking company licensed in a state to carry on purely interstate commerce cannot escape state regulatory control imposed on intrastate common carriers by the subterfuge of hauling freight unnecessarily out of the state and then back in again. This is the case of Eichholz v. Public Service Commission,[63] in which Eichholz, not licensed to do intrastate trucking, carried goods from St. Louis to Kansas City, Kansas, where he had a place of business, and then across the river into Kansas City, Missouri. The Court refused to recognize the bona fide character of this "interstate" transportation between the two cities in Missouri, and held that the appellant was subjected to no burden on his interstate business by denying him, under the terms of his license, the right to do a local business which, by meeting the stipulated requirements, he could secure the privilege of carrying on.

Clason v. Indiana[64] held that there is no burden placed on interstate commerce by a state health law requiring the carcasses of dead animals to be disposed of within the state under sanitary restrictions, and thereby denying to the plaintiff the privilege of carrying a dead horse over the state line.

In 1937, Florida imposed an "inspection fee" of fifteen cents per hundred weight on all cement sold and used in Florida which was manufactured abroad and imported. The state alleged that foreign cement was of inferior quality and therefore menaced public safety, and also that it "amounts to unfair competition being forced on this great industry in Florida." Thirty per cent of the cement used in the state was imported. The seventy per cent which was of local origin was not reached by the act. The fee was sixty times the cost of inspection. The Court declared, in a brief opinion by Mr. Justice Frankfurter, that "it would not be easy to imagine a statute more clearly designed than the present to circumvent what the Commerce Clause forbids." This is the case of Hale v. Bimco Trading, Inc.[65]

(2) *State Taxation and Interstate Commerce.* No new principles appear in the cases relating to this complicated problem. As in the police power cases just discussed, the Court seems anxious to sustain the maximum

[62] 306 U.S. 79, 1939.
[63] 306 U.S. 268, 1939.
[64] 306 U.S. 439, 1939.
[65] 306 U.S. 375, 1939.

freedom of the state to act which is consistent with adequate protection to interstate commerce.

In three cases, it upheld the provisions of the California "use" tax as applied to goods brought into the state from outside. The use tax is collected on goods of outside origin *used* in the state, to make up for the fact that they lie beyond the reach of the sales tax. The use tax thus applied to goods shipped into the state through interstate commerce was upheld in 1937 in Henneford v. Silas Mason Company.[66] In Southern Pacific Company v. Gallagher,[67] and Pacific Tel. & Tel. Co. v. Gallagher,[68] the Court held that the California use tax may validly be collected from the two companies on goods and materials brought by them into the state to be used in the carrying on of their interstate business. There is "a taxable moment" after the goods cease to be transported in interstate commerce and before they begin to be consumed or used in interstate operations. In each case, a property right is exercised in California. This is a taxable event, and its taxation does not burden interstate commerce nor deny due process. Justices Butler and McReynolds dissented.

In Felt and Tarrant Mfg. Co. v. Gallagher,[69] it was held that the appellant, an Illinois company carrying on interstate commerce in California through agents who acted as distributors of its products but themselves made no local sales, could validly be compelled to collect the California use tax from those to whom its products were delivered, and pay it to the state. The state may, without undue burden on interstate commerce, make the distributor its agent for the collection of the tax. The tax itself in this case did not fall on interstate commerce, but on the use of the commodity after interstate commerce had ended.

Two cases reaffirm the right of a state to exact from those engaged in interstate commerce a reasonable charge for the use of the state's highways. In Dixie Ohio Express Co. v. State Revenue Commission,[70] the payment required for the use of the highways was attacked as excessive, and also because the sums collected by the state were being used by it for the improvement and maintenance of rural roads which the appellant did not, under its license, use. Neither objection was sustained. The Court found that the sum paid for the privilege of using the state highways was reasonable and, following Clark v. Poor,[71] held that as long as the tax did not burden interstate commerce, it was no concern of the appellant what the state did with the money. In Clark v. Paul Gray, Inc.,[72] the Court upheld the new California caravan tax passed to replace the one held void in Ingels v. Morf[73] in 1937. The earlier act exacted a fee of $15 from each "caravan" using the state highways, but defined

[66] 300 U.S. 577, 1937. See this REVIEW, Vol. 32, p. 310.
[67] 306 U.S. 167, 1939. [68] 306 U.S. 182, 1939. [69] 306 U.S. 62, 1939.
[70] 306 U.S. 72, 1939. [71] 274 U.S. 554, 1927. [72] 306 U.S. 583, 1939.
[73] 300 U.S. 290, 1937. See this REVIEW, Vol. 32, p. 310.

"caravaning" as covering only vehicles brought into the state from outside. The Court held this discrimination against interstate commerce bad and the amount of the tax excessive. The amended statute eliminated the direct discrimination against interstate commerce, but exempted from the act "caravans" moving wholly within either of two zones comprising in substance the northern and southern halves of the state. The fee was kept at $15, or rather $7.50 was charged for "administration," and $7.50 for the use of the state's roads. The Court, speaking through Mr. Justice Stone, found the discrimination against and resulting burden upon interstate commerce removed, found no arbitrary discrimination arising from the creation of the zones, and with more complete information regarding costs of administering the law and the wear and tear on the roads, held that the fees charged were not so high as to burden interstate commerce.

In Gwin, White & Prince v. Henneford,[74] the Court reaffirms the old doctrine that a state may not impose upon a corporation doing both local and interstate commerce a privilege tax upon the right to do local business measured by the gross receipts from its entire business. To permit this, and by implication to permit all other states in which the company may do local business to do the same, would make possible multiple taxation of the interstate business which not only burdens it, but constitutes a discrimination against it in favor of local business. Mr. Justice Black dissented on the ground that no multiple taxation and resulting burden on interstate commerce had been shown, and that the complicated relationships involved ought to be dealt with by Congress in the exercise of its power to regulate commerce and not by judicially evolved rules.

(3) *State Taxation of Federal Instrumentalities—Overruling of Collector v. Day.* The Supreme Court has at last completely destroyed the constitutional immunity of official salaries from intergovernmental income taxation. It has squarely overruled Collector v. Day,[75] Dobbins v. Commissioners of Erie County,[76] and the more recent case of New York *ex rel.* Rogers v. Graves,[77] in each of which the intergovernmental taxation of official salaries was held to be an unconstitutional burden upon the essential governmental functions of the state or federal government. While the present case, Graves v. New York *ex rel.* O'Keefe,[78] held that New York may validly tax the salary of an attorney for the Federal Home Owners Loan Corporation, the Court makes it clear that the same rule applies to the federal taxation of state salaries.

This decision came as no surprise. It had been plainly forecast by the case of Helvering v. Gerhardt[79] at the last term, in which the salary of

[74] 305 U.S. 434, 1939.
[75] 11 Wallace 113, 1871.
[76] 16 Peters 435, 1842.
[77] 299 U.S. 401, 1937. See this REVIEW, Vol. 32, p. 309.
[78] 306 U.S. 466, 1939.
[79] 304 U.S. 405, 1938. See this REVIEW, Vol. 33, p. 237.

an officer of the Port of New York Authority was held liable to federal income taxation. The logical spade work was all done in the opinion in that case written by Mr. Justice Stone. His opinion in the present (O'Keefe) case covers the following ground: First, the suggestion that O'Keefe's salary might validly be taxed by the state of New York because the Home Owners Loan Corporation carries on a proprietary and not a governmental function for the federal government was flatly rejected. The distinction between proprietary and governmental functions which governs South Carolina v. United States[80] does not apply to federal functions. Since the federal government has only the powers delegated to it by the Constitution, "its every action within its constitutional power is governmental action, and since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, all activities of government constitutionally authorized by Congress must stand on a parity with respect to their constitutional immunity from taxation." In other words, O'Keefe is just as immune from state income taxation as is a federal judge. Second, Mr. Justice Stone commented upon, but did not decide, the question whether Congress might, under the shelter of the doctrine of implied powers and the supremacy of federal law, grant by statute to federal instrumentalities or agents greater immunity from state taxation than could be implied on constitutional grounds. If federal salaries are not constitutionally exempt from state income taxation, could Congress make them so by law? This was left open, and it may prove to be a question of great importance. Third, the H.O.L.C. is an instrumentality of the federal government. Congress has by statute given it immunity from state and federal taxation of its bonds, franchise, capital, reserves, and income. Its real property is not exempt, and Congress has said nothing about the state taxation of the salaries of its officers and employees. There is no evidence that Congress intended to make these salaries tax immune unless they are immune for constitutional reasons. Fourth, following the reasoning of the Gerhardt case, the state tax on O'Keefe's salary was held not to burden the federal instrumentality or function in connection with which he is employed. The old theory "that a tax on income is legally or economically a tax on its source is no longer tenable." Actual burden to the government must be shown as a result of the tax. If it be argued that government salaries, if subject to state tax, may have to be increased, thereby burdening the government which pays them, the answer is that this result is "the normal incident of the organization within the same territory of two governments, each possessing the taxing power," and the burden imposed is therefore "one which the Constitution presupposes."

In a concurring opinion, Mr. Justice Frankfurter, referring with approval to the old custom of writing *seriatim* opinions and stating that it

[80] 199 U.S. 437, 1905.

is peculiarly appropriate "when an important shift in constitutional doctrine is announced after a reconstruction in the membership of the Court," criticizes the use which the Court has up to now made of Marshall's "seductive cliche" that "the power to tax involves the power to destroy."[81] Applied as an absolute, it has produced results never contemplated by the framers. It is completely met by Mr. Justice Holmes' comment that "the power to tax is not the power to destroy while this Court sits."[82] Justices Butler and McReynolds dissent, adhering to the earlier precedents.

The case does two important things. It holds that the distinction between proprietary and governmental functions which lies at the basis of the rule in South Carolina v. United States, and which restricted the range of the state's immunity from federal taxation, does not apply to the functions of the federal government. It completely scraps the old rule making the official salaries, state or federal, immune from intergovernmental taxation. It does this by dissociating the officer as a taxpayer from the government which employs him; whereas the earlier doctrine had merged the officer and his salary with the government.

There are certain things the case does not do, which is far from saying they may not be done later. First, it does not abolish the doctrine of the complete immunity of government itself, its instrumentalities, property, or essentially governmental functions from intergovernmental taxation. This doctrine of complete immunity in this area is *not* replaced by the pragmatic test of actual burden. Second, the case does not indicate what the Court might do with the intergovernmental taxability of government bonds or the interest on them. The repudiation of the old theory that a tax on income is a tax on the source of the income may suggest that while government bonds might retain tax immunity, the interest on such bonds may be taxable. This by no means follows, since there remains the question of the actual effect upon the government's borrowing power of a tax on the income from its bonds. Third, the case does not indicate whether Congress may confer as a matter of legislative policy an immunity from state taxation which the Constitution does not require. Fourth, it should be noted that federal taxation of state salaries is established by necessary implication, without drawing in as a supporting reason the language of the Sixteenth Amendment which authorizes Congress to tax without apportionment incomes "from whatever source derived." The Court's theory that the Sixteenth Amendment did not enlarge the scope of the federal taxing power, but merely lifted a procedural limitation, remains intact.[83]

[81] McCulloch v. Maryland, 4 Wheaton 316, 1819.

[82] Dissenting opinion in Panhandle Oil Co. v. United States, 277 U.S. 218, 1928. See this REVIEW, Vol. 23, p. 99.

[83] The doctrine of the O'Keefe case is applied in State Tax Commission v. Van Cott, 306 U.S. 511, 1939.

Congressional Investigations of Matters of International Import. Recent congressional debates on neutrality legislation have once more focused attention on the problem of control of American foreign policy. On the one hand, the President has demanded that leadership in formulation of foreign policy be concentrated in the hands of the executive; on the other hand, Congress has insisted that its powers be employed to provide for adequate control of that leadership on behalf of the people. This problem of executive leadership and proper control is, perhaps, the central problem of the machinery of democratic government, but in the field of foreign policy it is a particularly difficult one because constitutional construction and usage have failed to draw definite boundaries as to congressional and executive powers.[1] If Congress is the instrument through which popular control of the executive is to be exercised, it is important to study the adequacy or inadequacy of such control.

Speaking broadly, Congress may influence foreign policy in three ways. Certain subjects such as foreign trade and immigration are within its scope. As to these, Congress may exercise positive control through the legislative processes and negative control by refusing to enact legislation desired by the President. On other subjects, such as treaties and the appointment of diplomatic officers, the Senate has the negative power of refusing consent. In both cases, legislation and ratification, the power of Congress is admitted, explicit, and direct.

Congress may also attempt to control foreign policy indirectly by supervising the work of the executive departments and administrative agencies, a procedure calculated to influence the direction and execution of the policies they are supporting. Finally, Congress may try to force the President to formulate executive policies in accordance with congressional wishes, even in matters where the President's power is admittedly exclusive. It must be remembered that the President does not operate in a vacuum, but is the head of a political party, subject to the pushes and pulls of public opinion. Congress may, therefore, indirectly shape the President's policies by creating or molding a sympathetic public opinion which in turn will influence the President.[2]

In thus attempting to control formulation and execution of foreign

[1] Edward S. Corwin, *The President's Control of Foreign Relations* (Princeton, 1917), pp. 205–207.

[2] Important works on this subject include James F. Green, "The President's Control of Foreign Policy," *Foreign Policy Reports*, Apr. 1, 1939; John M. Mathews, *American Foreign Relations: Conduct and Policies* (New York, 1938 ed.); D. C. Poole, *The Conduct of Foreign Relations* (New Haven, 1924); Benjamin H. Williams, *American Diplomacy: Policies and Practice* (New York, 1936); Quincy Wright, *The Control of American Foreign Relations* (New York, 1922).

policy, Congress has various procedures at its disposal, perhaps the most important of which is the investigating committee. This device has been used by Congress in each of the three suggested avenues of control. Such committees are obviously a means of collecting information so that Congress may legislate acceptably in its own sphere of competence, and are in fact the most important congressional instrument for scrutinizing the work of the executive and the administration, as well as the instrument par excellence for publicizing congressional opinion to secure public support.[3] The investigating committee, applicable to all three avenues of control, might seem a most effective instrument for furthering congressional guidance of American foreign policy. But in fact this is not the case. Congressional investigating committees have repeatedly failed to have much influence on the course of our foreign policy. To discover the reasons for such failure, this study of nine investigations made since the World War and concerned with matters of international import has been undertaken.

First as to background, the initial reason for their failure, the investigations fall into three categories: those resulting from the activities of some pressure group, those developing from the personal initiative of some member of Congress, and those showing mixed impulsion. The munitions investigation[4] and that of the St. Lawrence Waterway Treaty belong in the first category. The Women's International League for Peace and Freedom began lobbying for an investigation of the munitions industry in May, 1933, and it was largely through its efforts that Senator Nye was persuaded to sponsor the inquiry.[5] The resolution to investigate the terms of the St. Lawrence Waterway Treaty[6] was adopted at the behest of the New York State Power Authority, which believed that certain features of the treaty would operate against its interests.[7]

Five of the investigations grew out of the personal predilections of certain congressmen. The investigation of our trade with China[8] was only

[3] Important studies of investigating committees are: Marshall E. Dimock, *Congressional Investigating Committees* (Baltimore, 1929); Ernest J. Eberling, *Congressional Investigations* (New York, 1928); George B. Galloway, "The Investigative Function of Congress," in this REVIEW, Vol. 21, pp. 47–70; Lindsay Rogers, *The American Senate* (New York, 1926).

[4] *Special Committee Investigating the Munitions Industry*, U. S. Senate, pursuant to S. Res. 206, *Congressional Record*, 75: 1 (Apr. 12, 1934).

[5] *Memorandum on the History of the Munitions Campaign of the Women's International League for Peace and Freedom*, June, 1934, prepared by Dorothy Detzer, national executive secretary.

[6] *St. Lawrence Waterway*. Investigation by Subcommittee of the Committee on Foreign Relations, U. S. Senate, pursuant to S. Res. 278, 72: 1 (Jan. 15, 1932).

[7] *Second Annual Report of the Power Authority of the State of New York for the Year Ended December 31, 1932*. Legislative Document, No. 70, pp. 14–21 (1933).

[8] *Commercial Relations with China*. Investigation by a Subcommittee of the

one of a series of efforts by Senator Pittman in behalf of the American silver producers. In this instance, Senator Pittman tried to prove that our reduced trade with China could be traced to the depreciation of silver in terms of gold. China's currency was based on silver, and therefore a depreciation in silver would reduce Chinese purchasing power for American goods. He hoped by this demonstration to encourage the federal government to initiate measures which would raise the price of silver and thus benefit the silver states of which he was and is a faithful representative. The investigation of communism[9] conducted by Representative Hamilton Fish was, on his own admission, an attempt to collect facts supporting, and even requiring, the deportation of alien communists.[10] The Nazi investigation, or the investigation of "un-American activities" as it was later called,[11] was somewhat more inclusive, but had the same purpose. Mr. Dickstein, as chairman of the House Committee on Immigration, was, no doubt, motivated by the desire to increase the business of that committee. The current Dies investigation on the same subject[12] has largely the same background and purpose. In Senator Johnson's investigation of foreign bonds,[13] some of his deeply rooted personal prejudices were manifested. His fear of political entanglement through loans made to other countries and his distrust of Wall Street helped form his antipathy toward the Hoover moratorium. This measure, he believed, was adopted because of the pressure brought to bear on President Hoover by Wall Street to secure these private obligations. The purpose of Senator Johnson's investigation was to show up this plot. Although the moratorium had been approved before the investigation was well started, the inquiry was continued in order to demonstrate the State Department's heavy responsibility for our disastrous foreign lending during the 1920's.

The influences that produced the other two investigations were com-

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Committee on Foreign Relations, U. S. Senate, pursuant to S. Res. 256, 71: 3 (June 2, 1930). For Senator Pittman's attitude, see *Hearings*, parts 1–4, *passim*.

[9] *Communist Propaganda.* Investigation by Special Committee of U. S. House of Representatives, pursuant to S. Res. 220, *Congressional Record*, 71: 2 (May 22, 1930).

[10] The "main purpose of the resolution is to get facts in order to legislate intelligently so that we can deport from the United States every single alien communist." *Congressional Record*, 71: 2, p. 9393.

[11] *Un-American Activities.* Investigation by Special Committee of the U. S. House of Representatives, pursuant to H. Res. 198, 73: 2 (Mar. 20, 1934).

[12] See D. A. Saunders, "The Dies Committee: First Phase," *Public Opinion Quarterly*, Apr., 1939, pp. 223–238.

[13] *Sale of Foreign Bonds or Securities in the United States.* Investigation by the Committee on Finance, U. S. Senate, pursuant to S. Res. 19, 72: 1 (Dec. 10, 1931). For purpose of investigation, see *Hearings*, pp. 149–150, 2122–2123; also *Congressional Record*, 72: 1, pp. 6052–53.

plex. Senator Fall's inquiry into conditions in Mexico[14] showed the bias of an individual, the pressure of a group, as well as party politics. Senator Fall had advocated an aggressive, if not an interventionist, policy toward Mexico for many years, and behind him was a group of Americans with holdings in Mexico who favored and supported the Senator's policy as the best means of protecting their own interests. Blocked in this course by a president of the opposing party, Senator Fall launched an investigation calculated to dramatize the case for intervention and to discredit the party in power.[15] In the investigation of Haiti and Santo Domingo,[16] there were two originating forces: a demand for an investigation by a vocal body of public opinion and party strategy prior to a presidential election. In 1919 and 1920, newspapers and magazines printed stories of the mismanagement involved in our occupation of Haiti and Santo Domingo.[17] After several naval inquiries proved unsatisfactory, there was a demand for congressional investigation.[18] This general agitation was seized upon by the Republicans as good campaign material, and they promised to make a thorough investigation as soon as they took office.[19]

Another background factor is the possibility of valuable personal publicity inhering in all congressional investigations. The desire to achieve a national reputation with a view to reëlection is understandable, and the publicity attendant on participating in a congressional investigation is an attractive prospect.

This canvass of origins seems to alter certain assumptions as to the purposes of investigations. It has been stated that such inquiries are instruments at Congress' disposal for furthering its control of foreign affairs. This is true. But Congress as a corporate body neither is moved to investigate nor even interested in foreign affairs. It is not Congress, but

[14] *Mexico.* Investigation by a Subcommittee of the Committee on Foreign Relations, U. S. Senate, pursuant to S. Res. 106, *Congressional Record*, 66: 2 (Aug. 8, 1919).

[15] James M. Callahan, *American Foreign Policy in Mexican Relations* (New York, 1932), pp. 577–581; L. J. de Bekker, *The Plot Against Mexico* (New York, 1919); *Nation*, Aug. 16, 1919, p. 195; *New York Times*, Sept. 9, 1919, p. 16; *New York Globe*, Sept. 9, 1919, p. 1; Alfred Vagts, *Mexico, Europa und America unter besonderer Beruchsichtigung der Petroleumpolitik* (Berlin, 1928), Chap. 10.

[16] *Haiti and Santo Domingo.* Investigation by a select committee, U. S. Senate, pursuant to S. Res. 112, *Congressional Record*, 67: 1 (July 27, 1921).

[17] *The Literary Digest* admitted that the *Nation* was the leader in the campaign to publicize conditions in Haiti and Santo Domingo (Oct. 20, 1920, p. 16). Other magazines soon followed. *Current History*, Dec., 1919, pp. 542–548, and Nov., 1920, pp. 342–348; *New Republic*, Dec. 15, 1920, pp. 71–72; *Outlook*, Nov. 24, 1920, pp. 542–545; *Forum*, Sept., 1920, pp. 216–227; *Independent*, Oct. 30, 1920, pp. 160–161.

[18] *Nation*, Oct. 6, 1920, p. 367. See also *Outlook*, Nov. 24, 1920, p. 545, and *New Republic*, Dec. 29, 1920, pp. 117–118.

[19] *Nation*, Nov. 3, 1920, pp. 493–494; Dec. 1, 1920, p. 615.

certain individuals or groups working in or on Congress, that have used the investigating process to modify and shape governmental policies in the field of foreign affairs. The corporate or institutional instinct of Congress is thus called upon to lend effective support to individual or group beliefs when opposed by the executive. Investigations are usually grounded in minority interests, and their main purpose is to prove and publicize a position that the minority has already taken.

II

The second reason for the impotence of investigating committees is to be found in their organization and procedure. One difficulty arises from the type of committee that is established. If the investigation is to be carried on by a special or select committee, jurisdictional jealousies are bound to arise. Recommendations that come from these committees are almost always sent to one of the standing committees, which are less likely to support trespassing measures sponsored by another committee. In the munitions investigation, three members of the Foreign Relations Committee were included. But this did not entirely solve the problem, as was amply demonstrated by the silent and yet discernible warfare waged over the neutrality legislation between members of the Munitions Committee and Senator Pittman, chairman of the Senate Committee on Foreign Relations.[20]

Another difficulty becomes apparent when the committee begins its labors. Careful organization prior to the hearings is a prime requisite for successful investigation. But frequently too little money is appropriated for hiring the research assistants and clerical staff that thorough preparation requires. The reason is, of course, that Congress is not willing to supply large sums of money to publicize the views of minority groups. Several of the investigations enumerated suffered from this deficiency, notably Senator Johnson's on foreign loans,[21] with the hearings a mere rambling series of interviews with bankers and government officials. In some instances, no real investigation was either made or intended. The investigating committee merely wanted to contact persons and groups of its own persuasion so as to advertise wide backing for its own point of view. No large staff of assistants was required for this duty, and consequently none was demanded. The investigations as to Haiti and Mexico relied heavily upon the testimony of a varied stream of witnesses who appeared before the committees to register complaints. The inquiries into

[20] See *Congressional Record*, 74: 2, p. 501.

[21] Senator Johnson's investigation received an appropriation of only $5,000; the St. Lawrence Waterways investigation, $2,500; Communism, $25,000; un-American activities asked for $65,000, but received $30,000; silver, $20,000; munitions, $135,000.

communism, un-American activities, and our trade with China showed that the chairmen had planned to call certain witnesses, a procedure which made the inquiries a little more orderly. The munitions investigation called out by far the most elaborate preparation. A secretary was hired to direct research, and he immediately retained a staff of field investigators and office clerks. For several months, material was collected, sorted, and filed, and the lines of investigation mapped out. When the actual hearings started, the work for each day was planned the night before, a prospective line of questions was prepared, and its contents discussed with the senator or member of the staff who was to take charge. This painstaking organization resulted in a minimum of vague and purposeless questions.

The actual conduct of the committees during their hearings has frequently been a hindrance to effective operation. A partisan approach is almost inevitable, because the committees are nearly always established to prove or publicize some point of view. As a result, friendly witnesses are allowed free rein and those who hold opposing views are routed and discredited as quickly as possible. In some degree, this bias was apparent in all nine investigations, but nowhere so flagrantly as in that sponsored by Senator Fall.[22] Such partisanship is probably inevitable, granting the origins and purposes of investigations; but it discredits an investigation, irrespective of the findings arrived at.

Some of the causes of the impotence of investigating committees appear to be grounded in the investigations themselves. Conceived by a minority to whom the investigation is a means of furthering its own point of view, the child is bound to show the defects of its parentage. These defects are minority support, little original research, haphazard organization, and heavily biased hearings.

III

Further barriers to the success of the investigating committees appeared when they tried to make their recommendations effective. These barriers arose not only from the nature of the investigating process, but also from the inherent disabilities of Congress in the field of foreign affairs. It has been suggested that three channels of control are open to an investigating committee: the legislative process, supervision of the executive and administration, and the rousing of public opinion to force the hand of the President.

The investigations of alien "isms," in so far as they tried to change immigration laws, were directed at a subject conceded to be within the

[22] *U.S. Senate, Preliminary Report and Hearings of the Committee on Foreign Relations, Congressional Record*, 66: 2. Senate Document No. 285. See pp. 71–73, 207–294, 365–370, 403–423. *Nation*, Sept. 20, 1919, p. 387.

legislative competence of Congress.[23] All three inquiries failed to modify our immigration policy substantially.[24] All three were opposed by the President, who proved able to induce his party followers in Congress to quash the resulting proposals. Even if legislation were enacted, it would have to be administered by the executive; and nothing short of impeachment can compel the executive to interpret and enforce an act in accordance with congressional wishes. Behind the successful opposition of the President to this type of legislation has been a public opinion that has not been determined by the committees' hearings.

That the munitions investigation had considerable influence on the shaping and adoption of our neutrality legislation cannot be denied.[25] But that it did so was largely fortuitous. The sponsors of this investigation were originally interested in legislation that would publicize and control domestic manufacture and foreign sale of munitions. For many years prior to this investigation, they had been urging embargoes on munitions in time of war; and they felt that the opposition of the munition manufacturers had been largely responsible for their continued failure.[26] The investigation was to prove this responsibility and thus facilitate passage

[23] Fong Yue Tong v. U.S., 149 U.S. 689 (1893); U.S. v. Ju Toy, 198 U.S. 253 (1905).

[24] *Investigation of Communism.* Recommendations in *House Report* No. 2290, 71: 3. Legislative results: H.R. 16296 (exclusion and expulsion of alien communists), reported favorably (H.Rep. 27970), not debated; H.R. 16348 (denied mails to communist literature), died in Committee on Judiciary, 72: 1. Seven bills to exclude communists died in Committee on Naturalization and Immigration: H. Res. 4579, 10975, 10979, 11389, 11733, 11924, 11946. H.Res. 12044: introduced by Mr. Dies, reported favorably (H.Rep. 1353), passed by House (*Congressional Record*, 72: 1, p. 12099), reported favorably by Senate Committee on Immigration (S.Rep. 808), three times bill passed over and never debated (*Congressional Record*, 72: 1, pp. 13983, 15465, 15689).

Investigation of Un-American Activities (Mr. Dickstein, 1934). Recommendations in *House Report* No. 153, 74: 1. Legislative results: H.R. 8623 (registration of foreign agents) died in Committee on Foreign Relations: H.R. 5839 and H.R. 7221 (shorten stay of foreigners on temporary visas), H.R. 5839 reported favorably (H.R. 1057), never debated on objections in House (*Congressional Record*, 74: 1, pp. 2154, 4975). H.R. 5845 (forbade propaganda in military or naval forces), died in Committee on Military Affairs. Mr. Dickstein proposed another investigation on the same subject in April, 1937 (75: 1, H.R. 88), but it was quashed by the House (*Congressional Record*, 75: 1, p. 4215). See also *New York Times*, Apr. 9, 1937, p. 1.

Investigation of Un-American Activities (Mr. Dies, 1938–39). A number of bills providing for the deportation of aliens have been submitted to the House, but only that of Representative Dempsey has been passed. *New York Times*, Mar. 24, 1939, p. 13.

[25] See statement of Senator Hiram Johnson, *Congressional Record*, 75: 1, p. 2234: "I congratulate the Munitions Committee, Mr. President, upon finally a goal achieved. . . . Finally the State Department has yielded to the Munitions Committee and has adopted their theory."

[26] See note 5, *supra.*

of their measures. In the meantime world events conspired to give added impetus to the passage of such legislation, although for entirely different purposes. The fiasco of collective sanctions as a means of preventing war in the Far East and the imminence of war between Italy and Ethiopia, which might easily become another world war, produced a resurgence of isolationist sentiment in this country. The conviction had been growing that our neutrality program early in the last war had not been adequate, and various revisions of our neutrality legislation were beginning to be suggested.[27] In this context, an embargo on arms took on new meaning. It now became but one step in a program to restrict the rights of American citizens in time of war in order better to preserve our neutrality.

Placed in this strategic position, the committee immediately assumed leadership of the new movement. The actual findings were important to the development in two respects. Early revelations of trade practices of munitions manufacturers and the support that they had received from various government departments eliminated opposition from both these quarters. The later study of our neutrality policies of 1914–17 produced documentary evidence supporting the position of those who were now demanding a restriction of our historic rights of trade and travel.[28] The undoubted influence of the munitions investigation must not obscure the fact that the committee did not get the kind of legislation it desired. The four members of the committee who were the chief advocates of this legislation voted against the passage of the Neutrality Act of 1937.[29] The President, who had reluctantly accepted the necessity of any legislation, was determined to secure a mandate that would allow him as much discretion as possible. Working through his large party following in Congress, and chiefly in the House, he was able to rewrite parts of the legislation in large measure to his own liking. The non-application of the act during the Sino-Japanese war showed that the executive's power to administer laws passed by Congress reduces the effectiveness of the entire legislative process as an instrument of congressional power over foreign affairs.

IV

Three of the investigations attempted to review the work of executive departments—the second of the three possibilities for shaping foreign policy. The inquiry into Haiti and Santo Domingo looked into the Departments of State and Navy in order to determine how our supervision of this island had been and was being conducted. The investigation had

[27] See particularly Charles Warren, "Troubles of a Neutral," *Foreign Affairs*, Apr., 1934.

[28] *Special Committee on Investigation of the Munitions Industry*, "Report on Existing Legislation." Sen. Rep. No. 944, Part 5; 74: 2.

[29] *Congressional Record*, 75: 1, p. 3692.

been promised by the Republicans when out of power, and was conducted by them after they had won an election. As a result, the many shortcomings and failings of these departments during the years when the Democrats were in office were fully revealed. But the Republicans were in no position to recommend a change of policy and, since the committee had been sponsored by a Republican president, it recommended none. The minor administrative reforms recommended in the committee's reports were accepted because they had already been agreed upon.[30] It can hardly be said that this investigation influenced the executive or its departments at all, since there was such full coöperation between them.

The munitions committee studied the promotional activities of the Departments of State, War, Navy, and Commerce with respect to foreign sales of arms and munitions. All these departments were shown to have given considerable aid and encouragement to the munitions traffic[31], but there is no evidence that a change of policy has been effected.[32] Study of the handling of our neutrality program by the President and the State Department did convince many inside and outside of Congress that there were dangers in allowing too much discretion to the President and the State Department. This conviction gave rise to demands for mandatory neutrality legislation.

Senator Johnson called representatives of the State and Commerce Departments before his committee in order to publicize their responsibility for the chaotic condition of our private foreign loans. It has already been suggested that lack of staff and of preparation handicapped this demonstration. Consequently his recommendations received little backing when opposed by the executive and by the party of which Senator Johnson was a member.[33] His efforts were further nullified by the fact that no

[30] Senator McCormick stated before the investigation was authorized that the solution would be to centralize responsibility under one head (letter to the *Nation*, Dec. 1, 1920). The committee's interim report recommended the appointment of "a special representative of the President, a high commissioner," who would act as the American diplomatic representative and would direct the American treaty officials and marine brigade in Haiti (*New York Times*, Dec. 26, 1921, p. 15). The final report corroborated the interim report (Senate Report No. 794, 67: 2); reprinted in appendix to *Congressional Record*, 67: 4, p. 1121. See Arthur C. Millspaugh, *Haiti under American Control* (Boston, 1931).

[31] *Hearings*, part 4; especially exhibits 413, 423–425.

[32] Witness the recent case involving sale of American airplanes to the French. *New York Times*, Feb. 19, 1939, IV, p. 3.

[33] In lieu of a committee report, Senator Johnson took the floor on March 15, 1932, reviewed the work of the investigation, and urged the passage of two bills submitted on January 28, 1932. (S. 3350, providing for publicity on foreign loan transactions, and 3351 setting up a foreign loan board, *Congressional Record*, 72: 1, pp. 6052–6062). These bills were sent to the Committee on Rules, where they expired.

new foreign loans were being floated in this country, and that therefore there was little interest in changing governmental policy.

V

Four of the investigations made recommendations on subjects recognized as being within the exclusive jurisdiction of the President. Consequently an attempt was made to mold a public opinion that would force the President to adopt the policy that the committee desired. In the Mexican investigation, Senator Fall wanted the President to withdraw his recognition of Carranza and, if that proved not sufficient to protect American property rights, to resort to military force.[34] The failure of the Senator's efforts can be traced to President Wilson's firm opposition, the obvious bias of the committee (which alienated much support), the war weariness of the public, which did not care to embark on another military operation, and Carranza's timely demise, knocking the props from under the committee's recommendations.[35] The committee investigating the St. Lawrence Waterways Treaty advocated further negotiations to revise the wording of the treaty before submission to the Senate.[36] President Franklin D. Roosevelt's sympathies with the New York State Power Authority, in whose interest the revision was suggested, brought quick compliance from the State Department. It is fairly clear that the President would have acted at the suggestion of the Authority alone, and that the investigation as such was not needed to enlist presidential support.

During Mr. Dickstein's investigation of un-American activities, it developed that legislation providing for the deportation of alien communists and Nazis would frequently be unenforceable because of refusal by the home countries to admit them. To deal with this impasse, the committee recommended that the President negotiate treaties providing for deportation of aliens indicted for subversive activities.[37] The President refused to exercise his power to act on this request, and the committee had not aroused a public opinion sufficient to make it expedient for him to do so. Senator Pittman's committee soon discovered that the low price of silver could be traced to the policies of other countries, chiefly Great Britain, and that domestic legislation would of itself be inadequate. Consequently,

[34] *Report of Senator Albert B. Fall to the Subcommittee of the Committee on Foreign Relations, Examining into Mexican Affairs.* Senate Committee Print, 66: 2. Dec. 9, 1919. Reprinted in *Hearings, op. cit.*, pp. 843A–843J. Also *Partial Report of the Committee, Senate Department* No. 645, 66: 2. Reprinted in *Hearings, op. cit.*, pp. 3307–3373.

[35] See E. J. Dillon, *Mexico on the Verge* (New York, 1921); Rippy, Stevens, and Vasconcelo, *Mexico* (Chicago, 1929); *New Republic*, June 22, 1920, p. 96; Callahan, *op. cit.*, pp. 577–582.

[36] U.S. Senate, 72: 2. *St. Lawrence Waterways, Hearings*, pp. 962, 979.

[37] *House Report* No. 153, *op. cit.*

he recommended that the President call a conference of the silver-producing countries to agree on a plan for raising the price of the metal.[38] The President's refusal to act[39] aroused little protest—a sure indication that Senator Pittman's thesis, which the investigation was held to demonstrate, had not been accepted by the American public.[40]

VI

From this survey of congressional investigations dealing with foreign affairs, it is apparent that the reasons for their impotence are grounded in their origination with minorities and in the strategic position of the President in the conduct of our foreign relations. Short of a constitutional amendment, Congress can do nothing to shift the balance of power in its favor. However, the minority prostitution of investigating committees is something that can and should be rectified, not only because the investigation as a congressional procedure has been discredited, but also because congressional power and prestige in the field of foreign affairs have been lowered.

The investigation, we must conclude, has not been wisely used as an instrument for collecting information so that Congress may legislate appropriately within its own sphere of competence. The information procured is almost inevitably biased, and consequent legislation, if any, is bound to be based on half-truths. As an instrument for reviewing the work of the executive departments, the investigation is of but little use, because it is employed sporadically, and then not really to review but to criticize in the light of *a priori* standards. It is true that some information is thus made public that might not otherwise see the light of day. But to state the fact that such benefit is largely incidental is to show how far Congress has abrogated its power of review through its own misuse of the investigating process.

The corrective, if any, must come from Congress itself. Congress might well exercise more restraint in setting up investigations when it is probable, and even certain, that the inquiries will be conducted for the benefit of minorities. Only by such self-restraint will its investigating committee procedure escape the valid charge of initial bias and so develop into an instrument for more effective congressional supervision over American foreign policy, in harmony with the requirements of our democracy.

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[38] Senate Report No. 1600, 71: 3. Reprinted in *Congressional Record*, 71: 3, p. 470. Sen. Res. 442 reported favorably from Senate Foreign Relations Committee (Sen. Rep. 1716, 71: 3), and passed by Senate (*Congressional Record*, 71: 3, p. 5493).

[39] *New York Times*, June 4, 1921, p. 1.

[40] For opposition to the Pittman proposal, see Rufus Tucker, *The Annalist*, Feb. 27, 1931, p. 429; H. Parker Willis, *New Republic*, Mar. 11, 1931, pp. 92–94; Sir Arthur Salter, *New York Times*, June 2, 1931, p. 2.

The Restoration of Civil and Political Rights by Presidential Pardon.[1] Although much has been written on the general subject of the President's pardoning power, there is still considerable confusion concerning the use of that power for the restoration of civil and political rights to persons who have been deprived of them as a punishment for crime. Particular questions frequently raised are: What rights are lost? How are they lost? How may they be restored? That the issue is a live one is supported by the fact that in the year 1938 no fewer than 203 pardons were granted by the President to restore civil rights.[2]

The confusion on the subject is due in large measure to the complexities of our federal form of government. This was clearly noted by Attorney-General Caleb Cushing in his opinion of July 9, 1856, in the case of Oliver Robbins of Sackett's Harbor, New York. Robbins was convicted in 1851, in the Circuit Court of the United States for the Northern District of New York, of an offense against federal law, and was sentenced to imprisonment in the penitentiary of New York. In 1852, he received from President Fillmore a general pardon. In 1856, Robbins prayed "that he may be fully restored to the rights and privileges of citizenship," assuming that this could be accomplished by some act of the President. Attorney-General Cushing expressed the opinion that Robbins was in error, stating that the constitutional power of the President had been exhausted by the full pardon already granted. The disability from which Robbins desired to be relieved—if any existed—was imposed (continued the Attorney-General), not by the Constitution or laws of the United States, but by the laws of New York, which had no efficacy except within New York, and appertained to its local administration as a state. The New York provision referred to was to the effect that no person "convicted of an infamous crime," should vote at any election "unless he shall have been pardoned and restored to all the rights of a citizen" (*Revised Code*, Vol. I, pp. 347–348). Attorney-General Cushing pointed out that this provision was not altogether clear. He said it seemed to be assumed that some public act in addition to a pardon was necessary for the restoration to citizenship, instead of restoration to citizenship being the legal consequence of a pardon. If this were so, as presumed by the petition of Robbins, it was, argued Mr. Cushing, "a special disability imposed by the laws of New

[1] Two graduate students, William I. Cargo and Donovan F. Emch, assisted me in collecting materials for this article. I am greatly indebted to Daniel M. Lyons, Pardon Attorney in the Department of Justice, for invaluable information, including a copy of the rules governing applications for pardon. See also *Attorney-General's Survey of Release Procedure:* Vol. III, *Pardon* (Washington, 1939). A comprehensive bibliography is appended to this volume.

[2] U. S. Attorney-General's *Report*, 1938, p. 205. For the immediately preceding years, the figures are: 187 in 1937; 152 in 1936; 208 in 1935. Prior to 1933, the annual reports carried lists of individual pardons, with a brief summary of the facts in each case. Since 1932, only the total numbers are given.

York, not by any act of Congress, which can be removed only by the authority of that state, and which, in my opinion, is altogether beyond the reach of the President of the United States."[3]

However, the Department of Justice does not now base its practice as to accepting or rejecting applications for pardon upon too fine a consideration of the provisions of the laws of the state of the applicant's residence.[4] There may be cases where presidential action is necessary to restore full citizenship rights within the states. In such instances, the Department of Justice bases its attitude upon the opinion of Attorney-General Harmon in his review, on October 31, 1895, of the case of Jacob Warren. Warren was convicted on April 1, 1893, in the United States Court for the Southern District of Ohio, of making and prosecuting a false claim for a pension (a violation of Sec. 5438, *Revised Statutes*). He was sentenced on April 14, 1893, to serve two years in the Ohio penitentiary. Passing upon the necessity of a presidential pardon, Attorney-General Harmon stated that while it was probably true that, owing to the language of the constitution and laws of Ohio, Warren would not lose his right to vote, sit as juror, etc., by reason of his conviction for an offense which the laws of the United States called a misdemeanor, in some other states such loss of rights would result. The Attorney-General concluded that the necessity for pardon did exist, unless Warren was to be prevented from freely changing his residence under penalty of losing his rights of citizenship thereby.[5]

As indicated by Attorney-General Harmon, state constitutions and laws vary as to the necessity of a presidential pardon to the restoration of civil rights within the several states. Some of the state statutes provide specifically that a pardon by the President is required where the offense is against the federal laws; others are silent on the subject; while still others refer to pardons generally without specifying federal pardons. State courts have rendered varying decisions on the subject. In the case of Jones v. Board of Registrars of Alcorn County (56 Miss. 766), the court specifically held that a pardon by the President restores the right to vote to a citizen of Mississippi. The contrary seems to have been held by the supreme court of Tennessee in the case of Ridley v. Sherbrook (43 Tenn., 569). The experience of the office of the pardon attorney in the Department of Justice is that the doctrine of the Mississippi case is generally

[3] 7 *Opinions Attorney-General*, 760–761.

[4] Information supplied by Daniel M. Lyons, Pardon Attorney.

[5] 21 *Opinions Attorney-General*, 242–243. The records show that Warren was pardoned on January 17, 1896. The endorsement states that "the term of imprisonment to which this convict was sentenced having expired more than a year ago, and his conduct since his discharge having been exemplary, this pardon is granted for the purpose of restoring to him his rights of citizenship." *Annual Report of the Attorney-General of the United States for the Year 1896*, p. 193.

followed throughout the United States.[6] Because of this fact, the pertinent reason for the decision of the Mississippi court is here quoted: "It would be a subject of regret if there were no means of absolution by which the citizen could be restored to his rights. A man may be convicted wrongfully. Good men sometimes commit crimes or misdemeanors. Provocation and passion are liable to occur to all, and under their sway the best citizen might subject himself to conviction for what the law denominates a crime or misdemeanor. His guilt may be technical. There may be much to extenuate his act in obedience to the promptings of passion, under severe trial from provocation. He may have universal sympathy from his fellow-citizens, who have known how well he discharged his duties in life, and who make large allowance for his act, but the law demands and secures his conviction. The governor may pardon, but henceforth this citizen is excluded from suffrage, while thousands less worthy are allowed to exercise the right of suffrage simply because it may be that justice has not overtaken them. A frame of government which tolerates such a result would be seriously defective."[7]

In conformity with this principle, it is the practice of the Department of Justice to entertain applications for pardon to restore civil rights from any person convicted of a federal offense who shows in his application that he has conducted himself in a law-abiding manner for a period of not less than four years from the date of his conviction. Rule 19 of the *Rules Governing Applications for Pardon* (issued May 1, 1934) reads as follows: "In the absence of exceptional circumstances, petitions for pardon for the purpose of restoring civil rights will not be considered unless the applicant has been discharged from custody or from parole or probation not less than four years. A longer period may be required before favorable action is taken, dependent largely on the nature of the offense and the character of the applicant both before and since his conviction. In cases of perjury, subornation of perjury, or violation of a public trust involving personal dishonesty, or other crimes of a serious nature, the lapse of five years after release is usually required." Since the publication of these rules, President Roosevelt has stated that he wishes not to consider applications for pardon to restore civil rights from persons convicted of violation of the narcotic laws where guilt is shown, prior to the lapse of eight years after the expiration of sentence.[8]

[6] Information supplied by Daniel M. Lyons, Pardon Attorney. See also *Attorney-General's Survey of Release Procedure:* Vol. III, *Pardon*, Chap. 9, "The Effects of a Pardon." On September 22, 1860, Attorney-General J. S. Black expressed the opinion that "a person convicted of an offense against the laws of the United States, which disfranchises him as a citizen, can be restored to all the rights which he had before conviction by a free and full pardon from the President of the United States." 9 *Opinions Attorney-General*, 478. [7] 56 Miss. 766 (1879).

[8] Information supplied by Daniel M. Lyons, Pardon Attorney.

A formal petition for executive clemency, addressed to the President and signed by the applicant, must be submitted to the Attorney-General before the question of executive clemency will be considered.[9] The petition should state the name of the applicant, his age, previous criminal record (if any), whether a citizen of the United States or an alien, and if naturalized, his nationality, the date of his naturalization, his previous occupation and place of residence, the crime of which he was convicted, and the court, district, state, sentence, date of sentence, the penitentiary or prison to which sentenced, and the grounds upon which clemency is asked.[10] All applications for pardon to restore civil rights must also state the present address of the petitioner, and be accompanied by affidavits from at least three reputable citizens among whom the petitioner lives, stating that since his release from prison he has conducted himself in a moral and law-abiding manner, what his occupation has been, and what knowledge they have in the premises.[11] When an application is received, it is referred, with accompanying papers, to the United States attorney for the district where the trial took place, with directions to submit his report and recommendations thereon.[12] The record and conduct of each applicant for restoration of civil rights are to be investigated thoroughly by the Division of Investigation on request of the United States attorney to whom the application has been referred, and this report must be promptly transmitted to the Attorney-General.[13]

In most cases, the loss of civil rights on account of a conviction is resultant from the provisions, not of federal laws, but of state laws; yet there are federal offenses on conviction of which the exercise of certain civil rights is proscribed. The most severe federal penalty is connected with desertion or avoidance of military draft. An act of March 3, 1865, provided that all persons deserting the military or naval service of the United States were "deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States or of exercising any rights of citizens thereof."[14] By an act of August 22, 1912, these same penalties were made applicable to persons deserting from the military or naval service of the United States, or who, being duly enrolled, go beyond the limits of the United States with intent to avoid the draft. The penalties, however, are not applicable in time of peace.[15]

[9] *Rules Governing Applications for Pardon*, Rule 1. [10] *Ibid.*, Rule 5.
[11] *Ibid.*, Rule 19. [12] *Ibid.*, Rule 6. [13] *Ibid.*, Rule 20.
[14] *Revised Statutes*, Sec. 1996. This punishment was mitigated for those serving until April 19, 1865; *ibid.*, Sec. 1997.
[15] *Ibid.*, Sec. 1998. Presidential pardons to restore rights of citizenship forfeited under this section were more numerous immediately following the World War than

It will be noted that the "right to become citizens" is one of the rights described as relinquished by deserters. Applications for pardon to restore civil rights are frequently made by aliens who desire that form of clemency in order that they may apply for naturalization. The President has occasionally granted pardons in such cases.

So far as loss of civil rights is concerned, the usual penalty on conviction of federal offenses is disqualification from holding any office or place of honor, profit, or trust under the Constitution and laws of the United States. This penalty is applicable in the following cases: inciting rebellion or insurrection;[16] conspiring against the elective franchise;[17] unlawful presence of troops or armed men at polls by order of an army or navy officer or other person in the civil, military, or naval service;[18] intimidation of voters by army and navy officers;[19] prescription of qualifications of voters by army and navy officers;[20] interference with election officers by army and navy officers;[21] treason;[22] acceptance of a bribe by a member of Congress;[23] member of Congress taking consideration for procuring contracts or appointment to office;[24] member of Congress taking a compensation in matters to which the United States is a party;[25] United States officer accepting a bribe;[26] bribery of a judge or judicial officer;[27] judge or judicial officer accepting a bribe;[28] and destruction of records by the officer in charge.[29]

Persons convicted of perjury or subornation of perjury are incapacitated from testifying in cases in courts of the United States until the judgment against them is reversed.[30]

In summary, it can be said that political and civil rights may be lost under both federal and state laws. Presidential pardon is necessary for the restoration of rights in all federal cases carrying such penalty, and also in those state cases where such requirement is made by the constitution or laws of the state. Even where conviction within a particular state may not result in the loss of political or civil rights within that state, a presidential pardon may be necessary to enable the person in question to move freely into other states where the disability does exist—as illustrated by the Warren case cited above. In this sphere of governmental

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recently. Eleven such pardons were granted in each of the years 1921 and 1922. Only two were granted in 1938.

[16] *U. S. Criminal Code*, Sec. 4. [17] *Ibid.*, Sec. 19.

[18] *Ibid.*, Sec. 22. [19] *Ibid.*, Sec. 23. [20] *Ibid.*, Sec. 24.

[21] *Ibid.*, Secs. 25 and 26. [22] *Ibid.*, Sec. 2. [23] *Ibid.*, Sec. 110.

[24] *Ibid.*, Sec. 112. [25] *Ibid.*, Sec. 113. [26] *Ibid.*, Sec. 117.

[27] *Ibid.*, Sec. 131. [28] *Ibid.*, Sec. 132. [29] *Ibid.*, Sec. 129.

[30] *Revised Statutes*, Secs. 5392 and 5393. The *Criminal Code*, Sec. 125, omits the part of the penalty pertinent here.

activity, as in so many others, practice would be simplified by greater uniformity in state legislation.

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California Uses the Government Corporation. As one of the most significant of recent developments in public administration, the government corporation has been the subject of much study and discussion. Apparently without exception, interest has centered around the corporate agencies of the federal government and their operations. The time is perhaps overdue to point out that an increasing number of our state governments are depending upon corporations of their own for financing, constructing, and operating a wide variety of enterprises, including toll-bridges, sewage disposal plants, water resources and hydro-electric projects, housing programs, construction of university buildings, planetariums, public markets, and health resorts.[1] The creation of the large majority of these state and local "authorities," as they are ordinarily termed, is the direct outgrowth of the New Deal's public works and housing programs. In December, 1934, President Roosevelt wrote the 48 governors suggesting legislation which through "revision of the procedure relative to municipal financing" would enable the states to take "full advantage" of any public works program that Congress might continue.[2] The legal division of P.W.A. was placed at the disposal of the states, and much of the stimulation as well as the form of "authority legislation" must be credited to its staff. In some states, only through separate corporations and the device of revenue bonds could state constitutional limitations upon borrowing be circumvented and state participation in the public works program made possible. Administrative advantages of the public corporation were also considered of importance, however, and in states where constitutional obstacles were not met, these seem to have been the determining factor in the creation of corporate agencies.[3]

The state of California illustrates the growth of public authorities at the state and local levels, and also indicates quite clearly that this form of agency did not, like Minerva, "spring full-panoplied from the brow of Jove," but rather is little removed from older forms that have for years occasioned no astonishment. Special districts, with widespread corporate

[1] Samuel Taylor, "California Low Rent Housing Legislation," 11 *University of Southern California Law Review* (1938), p. 459; E. H. Foley, Jr., "Revenue Financing of Public Enterprises," 35 *Michigan Law Review* (1936), pp. 1–37.

[2] Foley, *op. cit.*, p. 5.

[3] This is true, for example, of the local housing authorities of California. Taylor, *op. cit.*, p. 460.

powers, have long been used by states for the administration of particular governmental functions, whether of a commercial nature or otherwise. Among the California examples which most closely approach the newer "authorities" are the Golden Gate Bridge and Highway District, authorized in 1923[4] and organized five years later, and the Metropolitan Water District of Southern California, organized in 1928 under authority of 1927 legislation.[5] Designed for the purpose of financing and constructing a bridge from San Francisco to Fort Baker across the Golden Gate, the former is governed by a board of directors appointed by the boards of supervisors of member counties. This board selects the general manager and other officers, and exercises the district's corporate powers, which include power to sue and be sued, acquire property, exercise eminent domain, fix toll charges, borrow money and issue bonds (with approval of two-thirds of the voters), and cause taxes to be levied and collected. Validated by later acts,[6] and with its taxation and borrowing powers upheld by the courts,[7] the District forged ahead with the difficult construction job and eventually opened the Golden Gate Bridge to traffic on May 18, 1937. Construction costs were slightly less than the chief engineer's 1930 estimate of $27,165,000, and toll charges are expected to pay off principal and interest on the District's $35,000,000 of bonds by 1971.

Organized to supply water from the Colorado River to the south coastal basin area of California, the Metropolitan Water District is in many ways similar to the Golden Gate District. General corporate powers are much the same, and board members are likewise chosen by member jurisdictions. In this case, however, the latter are thirteen cities of the area and others which may later join. Voting power of board members is proportionate to assessed valuation of the jurisdiction they represent, but a provision that no city shall have more than half of the votes in effect enables Los Angeles, with about three-fourths of the total assessed valuation, to veto but not force through a given measure. District bonds, again, are to be the chief source of capital, and again power of taxation reinforces the revenue base upon which debt service is to be supported. Voters of the District approved on September 29, 1931, a $220,000,000 bond issue which was almost entirely taken up by the R.F.C. Construction of the complicated dam, aqueduct, reservoir, and distribution system has been directed by a general manager chosen by the board and is now nearing completion.

It will be noted that the two districts described have much the same

[4] *Cal. Stats.*, 1923, p. 452. [5] *Cal. Stats.*, 1927, p. 694.

[6] *Cal. Stats.*, 1929, p. 165, and *Cal. Stats.*, 1931, p. 77.

[7] Doyle v. Jordan, 200 Cal. 170; Wheatley v. Superior Court, 207 Cal. 722; Dempter v. Superior Court, 207 Cal. 795; and Golden Gate Bridge and Highway District v. Felt, 82 Cal. 683.

detachment from the regular government structure and much the same form of organization and managerial freedom that characterize the federal government corporations. Without question, the respect in which they differ most markedly is the possession of taxing power, a thing unknown to the federal corporate agencies. The districts have no capital stock, it is true; but the significance of this distinction is minimized when it is remembered that many of the federal corporations are in fact financed almost entirely through borrowings.[8]

If the lack of taxing power is essential to the definition of "government corporation" as that term is commonly used, then the newer California authorities more clearly qualify. The three state-wide agencies of this type are the California Toll Bridge Authority, the (Central Valley) Water Project Authority, and the Rector Dam Authority. To these should probably be added the state-authorized housing authorities, which are of course common to other states as a part of the low-cost housing program being directed by the United States Housing Authority. Of this group, the Toll Bridge Authority was first in point of time, and has been in many respects the most important to date.

Not content with providing one hazardous bridge financing-construction job, the San Francisco Bay area has been the scene also of the California Toll Bridge Authority's operations. This time, a long Oakland-San Francisco bridge was involved, and in 1929 the California legislature imparted the original momentum with an act creating the C.T.B.A.[9] The five members of the Authority, constituting a directorial board, were to be the governor, lieutenant-governor, director of public works, director of finance, and highway commission chairman, serving *ex officio*. This board was to appoint the state highway engineer as chief engineer, to employ other officials as needed, and to exercise the Authority's powers, including the power to sue and be sued; to authorize the Department of Public Works to build and acquire toll bridges, highway crossings, and needed property; to issue revenue bonds; to fix rates of toll; and generally to "do such acts, and make such agreements not inconsistent with law as may be necessary or desirable" in connection with its duties.[10] Actual acquisition and construction, when authorized by the Authority, were to be directed by the Department of Public Works, and in 1931 the state legislature appropriated $650,000 for the creation in that department of a "San Francisco-Oakland Bay Bridge division."

Outstanding in the Toll Bridge Authority Act of 1929 was the character of the provision for bond issues—a provision marking one of the earliest authorizations of bonds secured only by the revenues of a public authority

[8] See the author's *Government Corporations and Federal Funds* (1938), pp. 61 ff. and *passim*. [9] *Cal. Stats.*, 1929, p. 1489.

[10] The last clause is an amendment added in 1933. *Cal. Stats.*, 1933, p. 35.

having no taxing power. The act specifically stated that neither principal nor interest should constitute an obligation of the state of California. Tests of the constitutionality of this type of bonds were soon begun, and favorable decisions of the state supreme court in 1931,[11] and again in 1933[12] when the R.F.C. desired further legal clarification, paved the way for construction to begin. Reassured on the legal questions, the R.F.C. purchased $61,400,000 of Toll Bridge Authority bonds, and ground was broken with great ceremony on July 9, 1933. All major decisions were made or approved by the Authority itself, though the Public Works Department, with regular state engineers and technicians, supervised the actual construction job. Outside consultants were called in from time to time at the discretion of the Authority, and construction contracts were let to low bidders. At a cost of $53,600,000, the bridge was completed and opened to traffic on November 12, 1936, again with much ceremony, climaxed by President Roosevelt's pressing of the "go" button from Washington. Work on approaches and railway facilities remained to be completed, but the opening of the bridge signalized the success of one of the major engineering feats of history. Tolls were set by the Authority, and the long process of liquidation is now under way.

The "Central Valley Project" has grown out of many years of study of the water resources problems of California's Sacramento and San Joaquin valleys. Encompassing over a half-dozen dam and canal units, this construction program is designed primarily to provide much needed water supplies for irrigation, for municipal and industrial purposes—and secondarily for generation of electrical energy. Actually, the history of the project has pretty much been written in the attempts to secure federal funds. It was when the New Deal was young and the time seemed propitious that the Water Project Authority was established as the state's administrative agency, August 15, 1933.[13] Unlike the C.T.B.A., this Authority was expressly created a "body politic and corporate"; yet the form and powers of the two agencies are very similar. Also governed by a five-man *ex officio* board, the Water Project Authority's directorate was interlocked with that of the C.T.B.A. by the membership of the state directors of finance and public works. The attorney-general, controller, and treasurer were designated as the other three members. The act named the state engineer as *ex officio* executive officer, but empowered the Authority to employ other personnel as needed.

As for the actual construction work, the Water Project Authority was directed to give the starting signal whenever it should determine the financial feasibility of the project. Contracts for the supply of water and

[11] *In re* California Toll Bridge Authority, 212 Cal. 298, 298 P.485.
[12] California Toll Bridge Authority v. Kelly, 218 Cal. 7, 21P.(2d) 425.
[13] *Cal. Stats.*, 1933, p. 2643.

electricity were authorized, with rates and charges to be fixed by the Authority so as to cover costs and debt service. The sum of $170,000,000 in revenue bonds which the Authority was given power to issue was to be reduced by any amounts contributed by the state of California or by the United States, and federal assistance was obviously contemplated. Efforts to secure such assistance were climaxed in 1935 when Executive Officer Hyatt was dispatched to Washington seeking a P.W.A. grant of $37,000,000 along with P.W.A. purchase of $116,000,000 in Water Project Authority bonds.[14] Instead of the loan, the United States government decided to adopt the Central Valley Project as a federal reclamation undertaking;[15] and it has made appropriations which total over $40,000,000 to date.[16] The United States Bureau of Reclamation is consequently directing the work, which is now well under way on the chief storage unit of the project—Shasta Dam—and the Contra Costa Canal. Other units, including Friant Dam and Reservoir, Madera and Friant-Kern Canals, the San Joaquin Pumping System, and the Delta Cross Channel, are in varying states of negotiation and study.

The turn of events since 1933 has brought an unforeseen change in the Water Project Authority's functions with respect to the Central Valley Project. Its administrative activities have been concerned chiefly with assisting the Bureau of Reclamation by means of surveys, studies, and reports. Actually, these studies, as well as other technical and legal activities of the Authority, are performed by the staff of the Public Works Department's division of water resources. The program of Governor Olson and the present membership of the Authority, however, would call for greatly increased activities, including operation of the project upon its completion and the issuance of revenue bonds to help in financing and organizing public districts to contract with the Authority for the purchase of water and power. Bills to effectuate this program, vigorously opposed by the utilities, failed of passage during the heated 1939 session, which saw so little of the governor's proposed legislation adopted. The future development of the Water Project Authority is problematical.

The most recent of the public corporations designed for water development is the Rector Dam Authority, created by a statute of 1935.[17] The director of public works, the director of finance, the state controller, and two other persons to be appointed by and hold office at the pleasure of the governor constitute the governing board and exercise the corporate

[14] "State Water Plan Urged in Washington," *California Highways and Public Works*, Vol. 13, No. 4 (Apr., 1935), p. 21.

[15] See Rivers and Harbors Bill of 1937, 49 *Stat. L.* 850.

[16] "Water Authority Approves Proposed Legislation for Central Valley Project," *California Highways and Public Works*, Vol. 17, No. 5 (May, 1939), p. 4.

[17] *Cal. Stats.*, 1935, p. 1463.

powers. Their commission was to investigate the feasibility of erecting a dam and constructing a system for the distribution of the water of Rector Creek "to the public, or to municipalities, or to public districts, or to state institutions or agencies," and if satisfied, to undertake construction. Power was given to the Authority to "issue revenue bonds to the federal government" in order to finance the project, and to fix rates and charges for water by contract with state agencies and public jurisdictions. On August 13, 1935, the voters of California vetoed a proposed constitutional amendment which would have assisted in financing the program,[18] and, apart from preliminary investigations, the Rector Dam Authority has never actually functioned. It is of interest primarily because of the form of organization and definition of powers contained in the statutes.

Created by laws of 1938 which follow almost exactly the "model housing bills" developed by P.W.A.,[19] the California housing authorities, like those of other states, will, during the ensuing years, provide an important testing ground for the public authority device. Participation of California in the United States housing program could have been carried out through the state government itself, or through established city and county governments. However, it was hoped that the advantages of specialization, business-like accounting and methods, and less political pressure would be realized through public corporations somewhat removed from the regular governmental structure.[20] Directed by five commissioners appointed by a mayor or board of supervisors, and an executive officer of the commissioners' selection, city and county authorities are to transact business only after a resolution of the local governing body has declared the need. Widespread corporate powers are enjoyed, and federal funds may be supplemented by revenue bonds, again expressly declared not to be an obligation of the state or any political subdivision thereof. The National Association of Housing Officials has pointed out how the authorities may best utilize the administrative advantages which the law has bestowed upon them.[21] The record will be watched with interest by both advocate and opponent of the "authority" as an administrative agency.

California's experience is sufficient to indicate that the problems of the government corporation are not limited to the federal sphere. Established in the majority of instances as an agency for participation in federal public works programs, the public authority is playing an increasingly important rôle in state and local governmental administration. Actually, it differs from some of the older special purpose "districts" in little other

[18] See Resolution, Chap. 138, *Cal. Stats.*, 1935, p. 2708.
[19] Taylor, *op. cit.*, p. 449. [20] *Ibid.*, pp. 458–459.
[21] National Association of Housing Officials, *Planning for Low-Rent Housing* (Chicago, University of Chicago Press, 1938).

than name and the absence of taxing power. Along with its corporate organization and powers, an outstanding characteristic of the authority is its method of financing by revenue bonds, expressly declared not to be obligations of regular governmental jurisdictions. While generally upheld as constitutional where a sound statutory basis exists, this method of financing will inevitably raise numerous questions both of law[22] and of economics as the various enterprises approach maturity.

As for the authority's other administrative characteristics, much the same question must be asked that has been raised by the federal government corporations. Can the large measure of freedom in management which successful business enterprise seems to demand be achieved without sacrificing adequate overhead control and coördination?

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The Reference Committee of the Ohio House of Representatives. In 1921, the House of Representatives of the Ohio General Assembly established a committee of eight members whose duty it was to scan all bills introduced for the purpose of determining whether they were frivolous or irrelevant, not introduced in good faith, or duplications of existing law. When this committee had satisfied itself on these points, bills were to be reported back to the House with recommendations of assignment to appropriate standing committees, thus relieving the speaker of this particular duty. In 1929, the rule covering the functions of this Reference Committee was amended so as to permit it to recommend changes, combine bills, and give its approval to "the form and legal effect" of bills. Other changes in 1937 and 1939 dealt with the number of members serving on the committee, and allowed the committee eight legislative days, instead of six, for disposing of bills. The rule under which the committee now functions is as follows:

"When a bill has been read the first time, it shall be referred to the Reference Committee for its consideration and report within eight legislative days after such reference. If it be apparent to said committee that any bill is of a frivolous nature, or that it was not introduced in good faith, or that it is a duplication of a House bill, or can easily be handled as an amendment to a House bill already introduced, or that it is in conflict with or a duplication of an existing statute without making proper provision for the repeal or amendment of such existing statute, said committee shall report said bill back to the House for its return to the author with a notation thereon of the reason for its return. The House may, by a majority vote, order any such bill printed and referred to an appropriate committee; otherwise it shall be returned by the clerk to the author, and

[22] Foley, *op. cit.*, pp. 26 ff.

he shall make note of the fact in the minutes of the House. All such bills which are not returned to the author in accordance with the preceding rule shall be reported back to the House by the Reference Committee, with recommendation for reference to the proper standing committee of the House, at which time it (*sic.*) shall be read and distributed after such reference. The Reference Committee shall make a written report to the House of its action on each bill referred to it, and such report shall be entered on the journal of the House. All Senate bills shall be immediately referred to the proper standing committees of the House by the Reference Committee. No bill shall be held by the Reference Committee for more than eight legislative days. Before any committee reports a bill to the House, the chairman of such committee shall submit the same to the Reference Committee and obtain its suggestions as to the form and legal effect thereof, which suggestions shall be made within at least two legislative days after the receipt of the bill and report. Such committee shall take action on said suggestions of the Reference Committee as it sees fit before making its report, but its report shall state that the suggestions of the Reference Committee have been considered or that the bill has been submitted to the Reference Committee two legislative days before the report is made and no suggestions have been received."[1]

When the House opened for business in 1921, there was not the usual flood of bills. Some enthusiasts for the newly-created Reference Committee saw in this a good omen for its restraining effects. During the session, it returned only one bill to its author. In the 85th General Assembly, 1923–1924, it returned only one bill to its author, but it combined various House bills with others to avoid duplication. However, in the 86th General Assembly, the committee seems to have got over its "stage fright" and to have become a legislative influence, though not before important changes in the rules had been made to strengthen its powers.

After the first reading of House bills, they are referred to the Reference Committee. The first act of the committee is to check against the Ohio code. The specific sections in the code that are affected by the proposed bill are listed on the bill, so that the committee may determine its recommendations. The proposed bill may be rejected as in conflict with an existing statute, or as a duplication of an existing law, or as a duplicate of a House bill. It may be so similar to a Senate or House bill that it can be handled as an amendment and such disposition is therefore recommended. Bills may be rejected also on the ground that they would be unconstitutional.[2]

Here, as in legislative bodies where the speaker assigns bills to standing

[1] *Rules of the House of Representatives, 93rd General Assembly*, pp. 19–21 (1939–40).

[2] This was done in three cases in 1927. See *infra*, p. 310.

committees, the chairman and members of the Reference Committee often are prevailed upon by the authors of bills to assign the bills to the standing committees which the authors believe will give them the most sympathetic consideration. A majority vote of the Reference Committee is required to recommend assignment of bills to standing committees. The chairman or some delegated member of the committee reports its actions to the House, which usually accepts the recommendations made. Reference to standing committees immediately follows the second reading of bills.

Before a standing committee may report or recommend a bill to the House for third reading, it must "submit the same to the Reference Committee and obtain its suggestions as to form and legal effect thereof." The Reference Committee is allowed two legislative days for making its recommendations and suggestions. It may do either one of two things. If the bill contains no apparent conflicts, is properly drafted, and is within proper limits, it will be returned to the standing committee stamped as follows:

SUBMITTED TO REFERENCE COMMITTEE
PASSED WITHOUT SUGGESTIONS

.....

CHAIRMAN
REFERENCE COMMITTEE

But if the Reference Committee offers suggestions to the standing committee, the bill is stamped and signed as follows:

SUBMITTED TO REFERENCE COMMITTEE
FOR SUGGESTIONS. RETURNED TO STANDING COMMITTEE WITH ATTACHED SUGGESTIONS WHICH WERE CONSIDERED.

.....

CHAIRMAN

When the standing committee reports a bill to the House for third reading, it is required to "state that the suggestions of the Reference Committee have been considered or that the bill has been submitted to the Reference Committee two legislative days before the report is made and no suggestions have been received."

Bills passed by the Senate are sent to the House of Representatives, where they are given at once to the Reference Committee. In considering Senate bills, the same procedure is followed as for House bills. Quite often a House bill may be considered as an amendment to a Senate bill, or a Senate bill may be substituted for a House bill, since it has already been printed.

House resolutions, House joint resolutions, and Senate joint resolutions are assigned to proper standing committees by the Reference Committee in somewhat the same manner as bills. Also, messages of the governor to the House are referred to the Reference Committee, which usually recommends that they be included in the House journal.

If a bill is introduced after the dead-line set for the introduction of bills, it is referred to the Reference Committee for decision as to whether it shall be considered. After a study of the circumstances surrounding the introduction of such a bill, the committee is required to "file a written report with the clerk, stating whether in its opinion there is any substantial reason why the said bill could not have been introduced prior to" the dead-line, "and whether there is any urgent necessity for its consideration."[3]

During special legislative sessions, the Reference Committee has the special duty of determining whether or not proposed legislation is within the scope of the call. The constitution provides that "the governor on extraordinary occasions may convene the General Assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation, or message to the General Assembly issued by the governor during said special session. . . ."[4]

The nature of the duties of the Reference Committee indicates that there should be a number of attorneys included in its membership. Seventy-four different persons have served on the ten Reference Committees since 1921. There have been 48 attorneys; indeed, in every session except two (in 1935 and 1937), a majority of the committee has consisted of attorneys. There is not a complete turnover of committee members from session to session. Members have served from one to four sessions.

A summary of the recommendations of the Reference Committee follows:

Year	*1921*	*1923*	*1925*	*1927*	*1929*	*1931*	*1933*	*1935*	*1937*	*1939*
Number of House bills	421	637	527	514	561	626	709	554	716	677
Number of Senate bills	267	282	304	295	267	347	412	361	367	327
Same as House bill	0	31	18	33	42	4	2	3	4	0
Same as Senate bill	0	0	3	5	22	35	14	29	2	14
To be treated with House bill	0	23	32	37	40	39	22	10	30	19
To be treated with Senate bill	0	0	23	27	6	1	0	1	2	0
Returned to author	1	0	5	7	45	47	34	8	1	7

[3] *Rules of the House of Representatives, 1939–40*, pp. 21–22.

[4] *Constitution of Ohio*, Sec. 8, Art. 3.

In conflict with existing law	0	0	0	2	1	0	1	0	3	0
To be offered as item in General Appropriation Bill	0	0	0	1	0	0	0	0	0	0
No state liability for county officers	0	0	0	1	0	0	0	0	0	0
Not to be printed	0	0	47	59	83	50	42	79	110	150
Not properly drafted	0	0	3	0	0	0	4	0	0	0
Law already in effect	0	0	0	0	0	0	0	0	0	1
Unconstitutional	0	0	0	3	0	0	0	0	0	0

The effectiveness of the Reference Committee is a demonstrated fact. An examination of the above table discloses (1) that five per cent[5] of the House bills duplicate each other or Senate bills; (2) that six per cent of the House bills are recommended to be combined with other House bills or Senate bills; (3) that three per cent of the House bills are returned to their authors; and (4) that 10 per cent of the bills are ordered "not printed."[6] Other results of lesser importance may also be noted.

It appears to have been well worth the effort to give the Reference Committee a trial. In assigning bills to the various committees, it is able to do much more effective work than the speaker in that it has eight legislative days in which to consider the bills, whereas the speaker usually has about 24 hours—not more than enough time to read the titles of the bills. Of course it should not be inferred that the Reference Committee reads all bills completely. In spite of this and other limitations, however, the committee seems to have been proved a positive force for economy and efficiency in the legislative process.

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[5] All these are approximate figures.

[6] It is to be noted that the trend in recommending that bills be "not printed" is upward. In the 1939 session, 23 per cent of the bills introduced were so recommended. The cost of printing bills averages approximately eight dollars a page.

MUNICIPAL AFFAIRS

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Philadelphia's Earned Income Tax. The city of Philadelphia is tapping a new source of revenue for $18,000,000 in 1940. Events leading to its adoption have their basis in the past ten years of financial distress. These events were not peculiar to Philadelphia. They may be found in one form or another as budgetary problems in many leading municipalities of the nation. Outstanding among the factors causing distress in Philadelphia was a 25 per cent decline in the assessed valuation of real property since the peak year 1931. This represented over a billion dollars of valuation and a loss of $20,000,000 in current real estate tax levy. Since current real estate has been the chief source of the city's annual income, the decline resulted in curtailment of essential city services and reduction of personnel.

For some years, curtailment of services, reduction in personnel, and the fortunate receipt of large annual sums from delinquent taxes enabled the city to survive the difficulties of the depression. However, the point was reached when these factors no longer sufficed to balance the budget. They were followed by more doubtful financial expedients, namely, overestimating of yearly receipts, floating of current deficits by means of temporary loans, and short-changing of sinking funds through excessive valuation of sinking-fund assets.

A point was reached in 1938 when the city lacked money for its annual appropriation to the sinking fund, the cumulative floating debt stood at approximately $38,000,000, the outstanding bonded debt amounted to approximately $550,000,000, with annual debt service charges thereon of over $30,000,000 a year, or 43 per cent of the total yearly budget. At this time, the city was $40,000,000 in excess of its constitutional debt limit and had no legal borrowing capacity. A substitute measure for the shrunken realty levy was attempted in the form of a two per cent sales tax effective for ten months in 1938.

Strong opposition to the sales tax at the end of the year prevented its reënactment for 1939. However, at the time of its adoption there was substantial sentiment favoring an earned income tax levied on residents and on non-residents employed within the city. This tax was enacted, but was contested for constitutionality in the courts. The Pennsylvania supreme court upheld the principle of a flat rate municipal income tax, but declared unconstitutional several deductions and exemptions, including a $15 allowance to the taxpayer for the cost of filing a return. The allowance would have excused persons in low income groups from payment of the tax. After the court's decision, the opposition of organized

labor and small wage-earners was powerful enough to force a repeal of the tax. Their task was made easier by the fact that it was the year for municipal elections (1939), with a mayor and a city council to be chosen, and also numerous county officers.

From January to August, 1939, Philadelphia operated without a budget. Municipal and county employees were paid through the grace of the Pennsylvania supreme court, which twice a month issued orders releasing pay-rolls. Without a formal budget, firms furnishing supplies to the city remained unpaid. Supplies were obtained whenever requested; but when bills were finally met, the cost was well above prevailing prices paid by other municipalities.

In August, a budget was finally adopted, the accumulated deficit (excluding capital mandamus debt) of nearly $33,700,000 was paid, and the city obtained sufficient funds to effect a paper balance through the sale of a valuable current asset. For years, the city had been receiving a rental of $4,200,000 from a private operating company for the use of the municipal gas works. This certain annual income was pledged to the Reconstruction Finance Corporation and private banking groups. The lenders agreed to advance the city $41,000,000 immediately, the loan to be repaid serially out of the former rentals over a period of 12½ to 18 years. Despite the paper balance thus attained, and the use as current funds of $7,300,000 remaining from the $41,000,000 borrowed to defray 1939 expenses, the city carried forward to 1940 a deficit of approximately $4,300,000.

The city charter requires that the budget for the ensuing year be brought into balance on or before December 15. In 1938 and 1939, it seemed virtually impossible to effect a balanced budget without drastic real estate tax increases. Yet these were avoided. It has been pointed out that a sales tax was a partial solution in 1938, and the budget was finally adopted in March. The sale of municipal gas works rentals was the means adopted in 1939, and the budget was adopted in August. In both years, city employees were paid—upon court orders—notwithstanding the absence of a budget. In the 1939 municipal election, the successful candidate for mayor campaigned on a platform of a balanced budget by December 15, to be effected by economies and new taxation. A study of the necessary 1940 departmental expenditures disclosed that estimated receipts were $18,000,000 short of balance after substantial economies had been effected and provision made for W.P.A. needs and payment of the 1939 shortage. The 1940 budget was the first in which the estimate of current receipts did not include the rentals of $4,200,000 from the municipal gas works. The acting mayor of the city had determined to bring the budget into balance. He appointed a representative Citizen's Revenue Committee of 25 members to advise upon how the difference between

prospective income and expenditures for 1940 should be met. After a careful study, the committee recommended a tax on earned incomes of residents and non-residents at a rate sufficient to place Philadelphia on a "true pay-as-you-go basis." The committee's recommendations were forwarded to the council by the mayor. A second tax on earned income, this time without deductions or exemptions, was drafted by the city solicitor and enacted by the council; and the measure was signed by the mayor on December 13, 1939, two days before the limit imposed by the city charter.

Having outlined the financial practices and expedients leading to the adoption of a tax with an anticipated yield of $18,000,000 at the rate of 1½ per cent, it may be appropriate to inquire how it is to be levied and collected. The tax is imposed upon the following subjects of taxation:

I. *The Salary Tax*

1. On the salaries, wages, commissions, and other compensation earned during 1940 by *residents* of Philadelphia.

2. On the salaries, wages, commissions, and other compensation earned during 1940 by *non-residents* of Philadelphia for work done or services performed or rendered in the city.

II. *The Net Profits Tax*

3. On net profits earned during the calendar or fiscal year 1939, of businesses, professions, or other activities conducted by *residents* of Philadelphia.

4. On the net profits earned during the calendar or fiscal year 1939, of businesses, professions, or other activities conducted in Philadelphia by *non-residents.*

When the unsuccessful income tax of 1939 was tested on constitutional grounds, the state supreme court indicated in its opinion that the salary tax (1 and 2 above) should be collected at the source. This suggestion was incorporated in the present ordinance despite protests from organized labor. Employers in the city are required to make deductions monthly, or at the time wages are paid. The tax is 1½ per cent of salaries, wages, and other compensation due to employees. This sum is forwarded by the employer to the city tax department on or before the fifteenth day of the following month.

The net earnings or profits (3 and 4 above) for the year 1939 of both residents and non-residents engaged in professional or unincorporated business activities within the city are subject to the tax. Such persons were required to file returns on March 15, 1940, showing aggregate amounts earned, net profits for the year, the amount of tax at the 1½ per cent rate, and other pertinent financial data. This information must be

submitted in the form of an acceptable accounting statement; and payment in quarterly installments is permitted.

In Pennsylvania, a municipality is prohibited by statute (1932 P.L. 45) from taxing sources subject to taxation by the state. Since business corporations are subject to a state income tax, their net earnings are not taxable by the city. There remains as taxable under the act the net profits of unincorporated businesses, partnerships, associations, professions, and any other unincorporated commercial undertaking conducted within the city. The fact that such enterprises may be owned by non-residents is immaterial.

The city has not attempted to levy upon unearned income, including dividends, interest, and rents. Probably such income could not be taxed because of the state levy upon personal property which falls upon the value of intangibles. A court decision would be required to clarify this situation.

While a number of suits are pending against the new tax, decisions in the lower courts, both state and federal, have thus far (March 19, 1940) been favorable to its enforcement. Some of the questions raised were peculiar to the municipal nature of the tax and may be of interest to students of local taxation and to local government officials contemplating flat-rate income taxation. Declining real estate assessments, restrictions upon graduated income levies, realty tax limitation laws, and state laws voiding local taxes on subjects taxed by the state may lead other municipalities to experiment with this type of tax.

1. Like many other municipalities, Philadelphia has a clause in its charter (1919 P.L. 581, Article XVI, Sec. 6) limiting the ordinances of the city council to a single subject. The present tax levies upon (a) *wages* and (b) *net profits* in the same ordinance. To this objection it may be answered that the general revenue power of the city is in reality the primary subject of the ordinance. The unsuccessful income tax ordinance of 1939 was sustained in principle by the state supreme court (Butcher v. Philadelphia, 333 Pa. 497, Ordinance of November 26, 1938). Since wages and net profits were included then, it would appear that little may be expected from the present effort to invalidate the ordinance on grounds of twin subjects of taxation.

2. Of significance to municipalities generally is the oft-challenged right to tax non-residents drawing salaries or wages or carrying on businesses or professions within the city. This question is of vital importance to commuters in suburban and metropolitan areas, as well as to near-by municipalities in need of revenue. The commuter takes refuge in the historic slogan of "taxation without representation." He overlooks the services which he receives in the form of police and fire protection, water supply, smooth highways, and subway transportation. Both residents

and non-residents were taxable under earlier revenue ordinances, and this objection is not thought to be a formidable one. However, the tax on non-residents has aroused opposition and militancy in neighboring municipalities. It is possible that retaliatory measures may infringe upon the tax freedom of Philadelphia residents employed outside the city, thus multiplying the barriers to trade and commerce.

3. The requirement that "taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax" (Constitution of Pennsylvania, Art. 9, Sec. 1) is found in many states. The municipal income levy raised the issue once more, because an increased yield was sought by making the tax retroactive for 1939 on net earnings of unincorporated businesses and professions. As to wages and salaries, the tax is due on 1940 income. Adequacy of classification is beyond the scope of the present discussion, but it may be pointed out that retroactive revenue measures have been sustained in both state and federal courts.

4. Some interesting questions in municipal taxation were evoked by the application of the levy to certain types of employment. May the city tax the salaries and wages of federal employees, state employees, school district employees, judges, non-residents employed upon federal reservations (e.g., a navy yard or arsenal), employees engaged in interstate commerce, non-resident salesmen representing non-resident employers, W.P.A. workers, men employed on state work-relief projects, etc.? These questions remain to be clarified by administrative regulations and court decisions. At present, the examples above, plus many other employable categories such as domestics, waitresses, and beggars, are treated by the collector as within the scope of the taxing act.

The receiver of taxes of the city and county of Philadelphia was designated as the officer responsible for the collection of the tax. An income tax bureau in charge of a deputy collector was established to perform the work. In the offices of the bureau, the task of compiling approximately 1,500,000 new tax accounts has begun. The initial staff consisted of 24 employees, and the appropriation requested was $125,000 for personnel, equipment, and supplies. The collection system employs punch-card machines, verifiers, sorters, collators, and similar devices utilized by large corporations for handling a large volume of accounts with a minimum of expense. In its first week of operation, the new unit cut over 40,000 employer information cards and mailed out over 100,000 employer forms together with regulations. Authority to interrogate persons under oath and to examine books, papers, and records was vested in employees of the bureau. Both the forms used and the mechanical organization of the office were based upon administrative experience afforded by the federal social security tax. Sources for uncovering taxpayers and checking returns

include local telephone directories, election registrations, state unemployment insurance records, and federal income and social security tax reports. Other sources of information are state tax reports, especially mercantile license and personal property returns. Attention is being given to local business and health licenses and to data obtained in the enforcement of the municipal sales tax. Relying as it does upon self-assessment, the tax is simple and efficient to administer. Printed tax forms and copies of regulations, with instructions for filing, may be obtained by writing to the Municipal Income Tax Bureau.

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Democratic Processes in the Trade Agreements Program. For almost six years, American commercial policy has been dominated by the trade agreements program. The Reciprocal Trade Agreements Act of 1934 was a congressional grant to an administrative agency of authority to alter the American tariff structure. Congress had recognized the desirability of relinquishing direct control over the tariff, temporarily at least, because of the widespread feeling that subordination of group welfare to individual interests was inherent in the system of congressional tariff-making. This new departure was widely acclaimed at first, but opposition soon developed. It was charged that the trade agreement method violated democratic principles, that trade agreements were negotiated in secret star-chamber proceedings. As negotiation of individual agreements was announced, producers who feared for their protected position in the home market, importers who desired to see domestic tariffs reduced, and exporters who wished to see the tariff barriers of other countries reduced, all sought to influence the course of the negotiations. This paper analyzes the methods used by the trade agreements organization to deal with these interested persons. Pressure groups have insisted that their interest in the course of trade agreement negotiations rests in the fact that they possess valuable information that the trade agreements organization must have to reach the best "bargain" with the other party to the trade agreements. Evidence to support this contention will be examined. Finally, for purposes of comparison, brief reference will be made to British experience.

I. ORGANIZATIONAL FRAMEWORK FOR TRADE AGREEMENT HEARINGS

Provisions of the Trade Agreements Act. The United States suffers from a legacy of detailed hearings on the various general tariff revisions by legislative action.[1] It was the hope of the framers of the Reciprocal Trade Agreements Act that these "wailings" of "infant" industries could be subdued. Accordingly, the original bill made no provision for hearings and was passed in the House in this form.[2] When the bill reached the Senate Finance Committee, intensive opposition arose on this point.[3] The Administration defended the original bill. Secretary Hull called the proposal for hearings "impracticable"; "nothing is more impossible than to go through the equivalent of a long judicial procedure, hearings here

[1] The hearings before the Senate Finance Committee on the Hawley-Smoot bill filled 18 volumes.

[2] H.R. 8687, 73d Cong., 2d Sess.

[3] *Reciprocal Trade Agreements*, Hearings before the Committee on Finance, United States Senate, 1934, pp. 1–130, *passim*.

and hearings there and hearings over yonder."[4] Assistant Secretary Sayre pointed out that industry would have the same opportunity to be heard under this act that it had under the flexible provisions of the 1930 act (sec. 336). Public hearings were out of the question. They "would give away to foreign nations our ammunition," since they would have representatives at the hearings.[5]

In spite of the weight of the testimony to the contrary, an opportunity for "interested persons" to express their views was provided for in the act: "Before any foreign trade agreement is concluded . . . reasonable public notice of the intention to negotiate an agreement . . . shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe . . ."[6]

The pressure groups had won their first victory under the catch-phrase of possible "arbitrary power of the President under a bureaucratic administration." So loosely was this section worded, however, that it could have been rendered meaningless had the "interested persons" abandoned the fight at that point. The act does not call for public hearings,[7] nor does it provide for the manner in which the "views" of "interested persons" shall be used in the trade agreement negotiations.

About two weeks after the act was signed, the relevant section was implemented by an executive order. This order called for the publication of the intention to negotiate trade agreements in the State Department's *Press Releases*, the *Treasury Decisions*, and the *Commerce Reports*.[8] The order created the Committee for Reciprocity Information (hereafter referred to as the C.R.I.) as the agency to receive the views of "interested persons," and stipulated that its members should represent the Departments of State, Commerce, and Agriculture, the Tariff Commission, and the National Recovery Administration, and that it should be placed under the supervision of the Executive Committee on Commercial Policy. It further provided that the C.R.I. might prescribe "the form and manner in which the views may be presented."[9] Public hearings were not required.

[4] *Ibid.*, p. 15. See also pp. 4–26.

[5] *Ibid.*, pp. 80–81. For the opinions of Secretaries Wallace and Roper, see pp. 29 and 130.

[6] 48 Stat. 943, Sec. 4.

[7] Senator Barkley made this clear in his testimony. *Reciprocal Trade Agreements*, Hearings, Senate, 1934, p. 388.

[8] It is now published in the *Federal Register* as well. It has been the practice of the State Department to send the notice to each member of Congress and to a regular mailing list of private individuals, firms, and associations that have requested that notices be sent them directly. *Extending Reciprocal Foreign Trade Agreement Act*, Hearings before the Committee on Ways and Means, House, 1937, p. 129.

[9] Executive Order No. 6750, June 27, 1934. The Treasury Department is now also represented.

About a week later, the C.R.I. announced that views might be presented in either oral or written form during a specified period after the notice of intention to negotiate was given.[10] This provision for oral as well as written hearings must be viewed as another victory for the "interested persons."[11]

Publication of the Concession List. The next stage of development occurred with the requirement that a concession list be published at the time of the announcement of the intention to negotiate an agreement. For the first 15 agreements, no list of items upon which the United States might consider making concessions[12] was published; the announcement of intention to negotiate merely contained a statistical statement of the most important commodities in the trade between the United States and the country with which the agreement was being negotiated.[13] Under this procedure, the "interested persons" were asked to give suggestions with regard to any commodity on the list, both exports and imports, on which concessions should be sought or offered. This was assailed as a very wasteful procedure, involving the expenditure of effort in the preparation of statements for the C.R.I. on commodities which, though important in the trade, might for some special reason not enter into the discussion at all. Hence it was suggested that the procedure would be improved by the publication of a list of the items upon which the United States would consider making concessions.

In a letter to President Roosevelt, Senator Steiwer urged that a concession list be published. The President replied that full consideration had been given to the proposal, but "the conclusion was early reached that such a procedure would be impracticable" because it would "complicate

[10] Department of State, *Press Releases*, No. 249, July 7, 1934, pp. 7–8. For a description of the work of the C.R.I., see Henry J. Tasca, *The Reciprocal Trade Policy of the United States* (Philadelphia, 1938), pp. 53–54, 62–64.

[11] Mr. A. M. Fox, of the Tariff Commission and a member of the C.R.I., stated in the hearings on the United Kingdom agreement: "I am sorry I have to discuss this in public hearing, but industry prefers to have these hearings public than to have them privately, so that is why we hold it this way." *Hearings before the Committee for Reciprocity Information in Connection with the Negotiation of a Reciprocal Trade Agreement with the United Kingdom*, Div. II, Vol. 3, p. 258. These hearings will be referred to hereafter in this paper as *Hearings, U.K. Agreement.*

[12] The term "concession" refers to a specific undertaking in the trade agreement to afford improved customs treatment to an imported commodity, or to a "binding" (i.e., an assurance that existing treatment will not be made less favorable during the life of the agreement) of present customs treatment.

[13] See, e.g., the announcement of the intention to negotiate a trade agreement with France, Department of State, *Press Releases*, No. 292, May 4, 1935, pp. 301–316. In the case of Cuba, the statistical statement was not printed with the announcement, but was released separately as a publication of the Department of Commerce. *Ibid.*, No. 249, July 7, 1934, pp. 7–9.

and delay the negotiation of trade agreements."[14] Nevertheless, the pressure was too strong, and the change was made. In the trade agreement with Ecuador, two new features were introduced. First, a preliminary informal announcement that negotiations were contemplated was made, and a list of the principal items of trade was issued, as previously had been the case when the formal announcement was released.[15] Second, a list of possible concession items was published when the usual formal announcement of intention to negotiate was given.[16] In practice, this list is based on detailed studies of those import items for which the other country is the leading supplier and such additional items as may be considered at the request of that country during preliminary conversations on the grounds that its interests, if not predominant, are at least important enough to merit consideration. Thus the other country helps determine the nature of the concession list.[17]

That the trade agreements organization was not completely happy over the change was revealed in the Senate hearings when the act was presented for renewal. Mr. Sayre stated that the change might serve to benefit the American producer. He felt, however, that it was certain to make trade agreement procedure more cumbersome, and that it might give rise to months of delay during negotiations.[18] Delay, of course, was exactly what the "interested persons" desired. The more time they had for "education" concerning the dangers of making specific concessions, the harder it would be for the trade agreements organization to convince the public, after the negotiation of an agreement, that little or no harm had been done and that far more would be gained than lost under the agreement. The State Department faced an additional problem in the

[14] These letters are printed in the *Congressional Record*, Vol. 79, 74th Cong., 1st Sess., pp. 6464–6.

[15] Department of State, *Press Releases*, No. 380, Jan. 9, 1937, pp. 16–18. The *Release* stated that these features were being "added experimentally" because "experience with trade agreement negotiations had indicated" their "desirability." The American Tariff League was delighted with the change, calling it "most welcome" and "a vast improvement." *Monthly Bulletin of the American Tariff League*, Supplement, Jan., 1937, pp. 1, 3.

[16] Department of State, *Press Releases*, No. 393, Apr. 10, 1937, pp. 210–211.

[17] *Hearings, U.K. Agreement*, Div. II, Vol. 5, p. 568.

[18] *Extending Reciprocal Trade Agreement Act*, Hearings, Senate, 1937, p. 18. Mr. Sayre especially expressed the fear that the other countries would ask for concessions on items not on the list. In practice, in the case of the Czech agreement it was necessary to add another item to the list after negotiations had begun. Department of State, *Press Releases*, No. 415, Sept. 11, 1937, p. 225. In the case of the United Kingdom, the supplementary list included about 50 items. *Ibid.*, No. 435, Jan. 29, 1938, pp. 137–143. The delay was not so great in these cases because hearings had not begun when the supplementary items were released. Had the hearings been completed at the time, presumably an additional notice would have been necessary and additional hearings held.

task of making it clear that the published list was a "bargaining" list, and that it was not intended to make concessions on all of the items contained in the list. Opponents of the trade agreements program find that the general belief that duties will be reduced on *all* items on the list is frequently more effective in working up opposition to a trade agreement than the terms of the agreement itself.[19] Any slight business recession, whatever the cause, in industries interested in items on the list may now be attributed to "uncertainty as to the tariff rate."[20]

Changes in the Personnel and Functions of the C.R.I. While these changes in procedure were being made, the personnel and functions of the C.R.I. were also undergoing extensive changes. Until the end of 1936, the C.R.I. received views on proposed trade agreements only, and its members, although important officers in the various governmental departments, were nevertheless in most cases not the men actually engaged in negotiating the agreements. The C.R.I. conducted the hearings, received the written briefs and special correspondence, and then digested the material and gave it to the Committee on Trade Agreements (i.e., the negotiators) for whatever it was worth. In this way the pressure upon the individuals more directly responsible for the terms of the agreement was lessened.[21] On December 29, 1936, the C.R.I. announced that it "is now prepared to receive at all times written statements from any interested person on any aspect of the trade-agreements program, and, when the circumstances warrant, to arrange . . . for oral presentations to the Committee . . ."[22]

A still more fundamental change was introduced by altering the personnel of the C.R.I. In the early stages of the trade agreements program, to relieve the pressure of the "interested persons" on the individuals actually negotiating the agreements, their names were kept secret.[23] This brought forth the charge (well founded in fact) that the C.R.I. was in reality only a "buffer agency."[24] It was suggested that the hearings be

[19] Concerning the concession list for the United Kingdom agreement, Representative Treadway (Mass.) exclaimed: "The list . . . reads as if it were an enumeration of the manufactures of my state." *Hearings, U.K. Agreement*, Vol. 1, p. 19.

[20] In the United Kingdom agreement, the original concession list contained 410 items and the supplementary list 50 items. The final agreement included concessions of 331 items in the first list and 34 in the second. In 125 cases, however, the final concession was accorded to a more limited class of goods than indicated by the item on the concession list. [21] Tasca, *op. cit.*, pp. 66–68.

[22] Department of State, *Press Releases*, No. 379, Jan. 2, 1937, p. 2. See also C.R.I., *Suggestions as to the Method and Character of Representations to the Committee for Reciprocity Information* (Dec., 1937), pp. 1–2.

[23] *Congressional Record*, Vol. 79, 74th Cong., 1st Sess., Apr. 26, 1935, p. 6460. It is probable, however, that the well informed had a fairly accurate knowledge of the membership of the Committee for each agreement.

[24] *Ibid.*, p. 6465. See also House Report, No. 166, 75th Cong., 1st Sess., p. 21 (Minority views): The C.R.I. conducts hearings, but "an entirely different group

conducted by the agency negotiating the agreement. The trade agreements organization resisted this change for more than two years, but finally (May 14, 1937) announced that the C.R.I. would be reconstituted. "Closer integration has been accomplished mainly by designating as members of the Committee for Reciprocity Information officers of the Government who are at the same time members of the Committee on Trade Agreements."[25] The net result is that men burdened with the responsibility of making real decisions of policy are given the added task of separating a few kernels of truth from the tremendous amount of chaff presented at the public hearings. The C.R.I. is still constituted in conformity with this change.[26] Recently it has been placed "under the jurisdiction and control of the Department of State."[27] This change probably was effected in the interest of organizational efficiency, and it is doubtful whether it presages any change of policy.

A brief recapitulation at this point will make the surrender to outside pressure stand out in bold relief. The House bill made no mention of hearings; a provision for hearings was inserted by an amendment in the Senate Finance Committee. The executive order establishing the C.R.I. did not call for public hearings; they were provided for by a regulation of the C.R.I. itself. Hearings at first were limited to the specific trade agreement in question; now they may be held on any phase of the trade agreements program. Beginning with the Ecuador agreement in 1937, a complete list of possible concession items was published, with the result that negotiations are delayed and "interested persons" can concentrate attention on specific commodities more effectively than before. The

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conducts these negotiations in secret, star-chamber proceedings." President Roosevelt denied that the C.R.I. was a "buffer agency," but his denial does not sound convincing. Mr. Sayre stated: "Speaking generally, the actual negotiators are men who are not sitting on that Committee [C.R.I.]." *Extending Reciprocal Trade Agreement Act*, Hearings, Senate, 1937, p. 18.

[25] Department of State, *Press Releases*, No. 398, May 15, 1937, p. 335. Mr. Henry F. Grady, former chief of the Trade Agreements Division in the State Department and chairman of the Committee on Trade Agreements, was made chairman of the C.R.I. See also *Hearings, U.K. Agreement*, Div. IV, Vol. 2, pp.132–143; F. B. Sayre, *The Way Forward* (New York, 1939), p. 87. Mr. Oscar B. Ryder, vice-chairman of the Tariff Commission, is at present the chairman of the C.R.I. He is also a member of the Committee on Trade Agreements and the Executive Committee on Commercial Policy. *Department of State Bulletin*, No. 11, Sept. 9, 1939, p. 236. Even with this complete change, some opponents continue to regard the C.R.I. as a "stuffed committee." *Congressional Record*, Vol. 84, 76th Cong., 1st Sess., Jan. 10, 1939, p. 229.

[26] Some members of the Committee on Trade Agreements, however, are not members of the C.R.I.

[27] Executive Order No. 8190, July 5, 1939.

Committee on Trade Agreements, formerly assisted by the C.R.I., is now burdened by the work of the C.R.I. itself.[28]

II. VALUE OF TRADE AGREEMENT HEARINGS TO TRADE AGREEMENT NEGOTIATIONS

The Anglo-American Trade Agreement is the most extensive agreement concluded under the authority of the Trade Agreements Act. The procedure with respect to hearing interested persons had become fully established before formal negotiations for this agreement were undertaken. Two questions arise. How was this procedure adapted to the problem of concluding a successful trade agreement with a great commercial nation? How much assistance was rendered to the Committee by the elaborate system of oral and written hearings? About 400 requests were granted for opportunity to give oral testimony, and approximately 150 written briefs were filed.[29] In addition, it is probable that there were extensive private consultations.

From a study of the public hearings, it is safe to assume that the C.R.I. received the more helpful information from the written briefs and the private consultations. Unfortunately, because of the confidential nature of some of the material presented in the written briefs, they are not available for study.[30] Hence, study must be limited to the public hearings. After this is done, certain preliminary conclusions concerning the written briefs can be drawn by inference.[31]

So many requests to appear in public hearings were received in con-

[28] It would be unfair, however, to conclude that the trade agreements organization has become subservient to pressure groups. A complete analysis of all trade agreements concluded would be a prerequisite for a definitive statement, but a preliminary glance at the various agreements indicates that the most recent agreements effect more tariff reductions than all of the early agreements combined. Hence it seems plausible to conclude that in making tariff reductions the trade agreements organization is not as afraid of pressure group opposition now as it was originally. Further, even if the changes described above seem serious enough in themselves, they still fall far short of many changes that have been advocated, such as Senate ratification and application of the cost of production formula to tariff reductions.

[29] *Hearings, U.K. Agreement*, Vol. 1, p. 4; Div. IV, Vol. 2, p. 195.

[30] Two of the written briefs were printed by request in the *Congressional Record* (Vol. 83, 75th Cong., 3d Sess., Appendix, pp. 665–666, 756–758), and a few were published privately, but it would be unfair to generalize concerning the quality of all the written briefs from the few that are available. Those available were published because of their propagandist nature, and not because of real information they contained. It is only fair to assume that the majority of the written briefs were of better quality. See statement of Mr. Henry F. Grady, *Hearings, U.K. Agreement*, Div. I, Vol. 1, p. 54.

[31] Most of the witnesses gave a summary of the material in their written statement, and some even insisted upon presenting their written statement orally. *Ibid.*, Div. IV, Vol. 2, p. 273.

nection with the Anglo-American Agreement that the C.R.I. was enlarged to 20 officials. During the first two days, hearings were held before the full committee, and general statements were received from members of Congress, state and city officials, and others concerned with several groups of products. Beginning with the third day, the C.R.I. was divided into four divisions, and four sets of hearings were held simultaneously.[32] The testimony presented is contained in 22 volumes comprising almost 3,000 pages.[33]

The general statements made before the full committee contained very little real information. For the most part, they were made by congressmen who insisted that the proposed trade agreement "hangs like a sword of Damocles" over the business and labor of Massachusetts, that industry was being placed upon "the sacrificial altar," and that New England was being "sold down the river."[34]

Approximately 80 per cent of the testimony presented orally was given by domestic manufacturers protesting against a proposed concession. About 10 per cent came from exporters asking for concessions from the United Kingdom, and less than 5 per cent came from importers asking for a reduction in the United States tariff on specific items. In addition, a few industries (on a net export basis) suggested concessions that the United States might make, and shipping interests and consumers were also represented. The reason for the statements by a large number of domestic producers is too obvious for comment. It is a little difficult to

[32] The hearings are not published, but a complete stenographic transcript was taken and is available at the Tariff Commission. The testimony of congressmen before the C.R.I. is usually published in the Appendix to the *Congressional Record*. For the United Kingdom agreement, see Vol. 83, 75th Cong., 3d Sess., pp. 990–992, 994, 996, 1010–6, 1028–9, 1034, 1037–8, 1042–3, 1046, 1062–3, 1144–5, 1149–50, 1669–70. There has been some agitation in favor of printing all the public hearings. *Ibid.*, Apr. 14, 1938, p. 5461.

[33] Only 2,700 pages of transcript resulted from the first 15 trade agreements. *Extending Reciprocal Foreign Trade Agreement Act*, Hearings, House, 1937, p. 130.

[34] *Hearings, U.K. Agreement*, Vol. 1, pp. 19, 31, 126. Later Mr. Grady remarked that "we can dispense with oratory." *Ibid.*, Vol. 2, p. 231. The most interesting of the general statements was that presented by the National League of Women Voters in which it was emphasized that many of the concession items were of vital interest to consumers and asking that the tariff be reduced on them. *Ibid.*, Vol. 2, pp. 335–339. This same group had submitted a letter to the Senate Finance Committee when the act came up for renewal. *Extending Reciprocal Trade Agreement Act*, Hearings, Senate, 1937, p. 517. Optimists may find comfort in this demonstration that the public at large (the consumers) has finally been represented in hearings concerning tariff matters. As usual, labor unions supported domestic producers in opposing American concessions. Thirty spokesmen appeared for the unions, of which only one favored the trade agreement. *Hearings, U.K. Agreement*, Vol. 2, pp. 340–344.

understand why so few importers were present,[35] and the reason for the presence of so few exporters is still more obscure. Outside of timber exporters, few were represented. The large automobile, machine tool, and chemical interests, with total exports to the United Kingdom valued at more than $37,000,000 in 1936, were not represented at all. Although the United States secured a concession from the United Kingdom on raw cotton (binding of free entry), the only testimony given at the hearings by a cotton grower was given against the proposed trade agreement because of the fear that concessions would be given on cotton textiles entering the United States, and that this would reduce the domestic demand for raw cotton.[36]

The witnesses were anxious to give information with respect to the relative wage scales in the two countries,[37] but in almost all cases they gave the wage per hour or per week rather than per unit of output, thus rendering the information useless even if an attempt were made to apply the cost of production formula.[38] Labor costs per unit of output may, however, have been given in private. Sales figures were given frequently, but they were usually designed to show a decline and to serve as a warning that a duty reduction would be disastrous to the firms concerned. This information, however, may have been useful to the trade agreements organization, if for no other reason than to verify the accuracy of data already available.[39] Much of the statistical material presented, however, was secured from various government departments—especially Commerce, Agriculture, and the Tariff Commission. The trade agreements organization, of course, had all this material at its command, and had been using it for months in preparing for the work of negotiating the agreement.

Industry could have been of considerable help in suggesting reclassifica-

[35] Importers may feel that their presence at the hearings will offend their domestic connections; many importing firms also handle American goods, and it is possible that they sought to avoid the possibility of antagonizing American producers. [36] *Hearings, U.K. Agreement*, Div. II, Vol. 4, pp. 486, 499.

[37] They usually gave reports of wages in Japan in addition, on the ground that the benefits of the agreement would be extended to Japan under the operation of the most-favored-nation clause.

[38] The Trade Agreements Act, of course, does not call for the application of the cost of production formula. Several proposed amendments to the act to include this feature were defeated. However, a member of the C.R.I. stated at the United Kingdom hearings that relative costs of production were being "given their very careful consideration." *Hearings, U.K. Agreement*, Div. II, Vol. 4, p. 386.

[39] Much of the testimony was given by representatives of trade associations whose appearance assisted in avoiding needless duplication of individuals from the same trade. The C.R.I. had suggested that they appear (C.R.I., *op. cit.*, p. 6). Where they enjoyed the confidence of their members, they could assemble information that might be difficult to secure in any other manner.

tions of the American tariff which would have been of interest to British producers.[40] In some cases, witnesses were willing to give this information; but they were very reticent about giving it publicly.[41] One exporter suggested a reclassification in the British tariff.[42] Most of the questions asked by the C.R.I. concerning possible reclassifications of the American tariff received the answer that a reduction in the duty on one item (even if not produced in the United States in significant quantities) would mean disaster to another item (mainly produced in the United States) because of the competition between them.[43] Requests from the C.R.I. for suggestions as to possible concessions to be offered the United Kingdom were usually refused in public hearings,[44] but on several occasions it was indicated that the written brief had contained suggestions.[45]

Because of the large and efficient organization that supports the American trade agreements program, industry gives but little information which is helpful in negotiating trade agreements. Most of the material presented at the hearings has been gathered with the express purpose of protecting some specific industry. Since a trade agreement, to be effective, must offer concessions, this material has the cumulative effect of jeopardizing the trade agreements program. Some of the material presented simply is not true; much of it is misleading. We are seeing a recrudescence (though in a more limited form) of the chief difficulty of legislative tariff-making: so much attention must be given to individual interests that there is a tendency to forget group welfare. Time and again, a witness would make statements like these: "This industry is our bread and butter, and I do not think that it is entirely fair to help one industry at the expense and sacrifice of another"; "the trade agreements program has been pointedly applied to that part of Wisconsin which I represent"; and trade agreements are "robbing Peter to pay Paul."[46] Here we have developing a definite weakness in the trade agreements program. As long as the United States made few concessions, the program had enthusiastic support; but now with each new agreement real (or in most cases imaginary) "harm" was imposed upon an increasing number of interests. That these interests represent a comparatively small proportion of the total population does not seem to matter. Congressmen who supported the Trade Agreements Act in 1934 and 1937 were presently heard warning the trade agreements organization that their support would continue only if concessions were not made on items important in their state. The final result may well be that

[40] C.R.I., *op. cit.*, pp. 4–6.

[41] *Hearings, U.K. Agreement*, Div. II, Vol. 3, p. 311.

[42] *Ibid.*, Div. IV, Vol. 2, p. 150. [43] *Ibid.*, Div. I, Vol. 3, p. 523.

[44] Examples: *Ibid.*, Vol. 1, pp. 52, 162; Div. II, Vol. 4, p. 508. For an exception, see Div. II, Vol. 2, pp. 96–107.

[45] *Ibid.*, Div. II, Vol. 5, pp. 560, 585; Vol. 6, p. 599; Div. IV, Vol. 2, p. 243.

[46] *Ibid.*, Div. I, Vol. 4, p. 687; Div. IV, Vol. 3, pp. 319, 340.

congressmen may be forced to vote against a program that they consider to be in the national interest because of its unpopularity in their own districts, just as in 1930 congressmen voted for an admittedly bad tariff law because it promised greater protection for items in which they were particularly interested.[47]

III. REPRESENTATION OF INTERESTED PERSONS IN BRITISH TRADE AGREEMENT NEGOTIATIONS

It will be helpful, by way of comparison, to describe British practice with regard to receiving the representations of interested persons. In the United Kingdom, as in the United States, the law authorizing the negotiation of trade agreements is of recent date. The Import Duties Act of 1932 is the basis for the present British tariff structure, but it has been subject to frequent revision, the most important for consideration here being the Finance Act of 1933. Section 14 of this act authorized the Board of Trade[48] to recommend to the Treasury (after consultation with any government department likely to be affected) the reduction or repeal of duties necessary to effect a trade agreement. The Treasury brings this recommendation into force by issuing a statutory order, and these orders are subsequently laid before Parliament for approval.[49]

The law under which the British agreements are negotiated makes no attempt to define, as does the American law, the procedure for hearing interested parties in trade agreement negotations. Nor was there an established procedure based on precedent. Industry was not concerned over the negotiation of early British trade agreements. A number of agreements had been negotiated, but, though important concessions had been secured for British exporters, relatively few British duties had been reduced.[50] In making these reductions, the Board of Trade was probably

[47] Another weakness of the program lies in the fact that those gaining by it are not as outspoken in their praise as those who feel that they are suffering from it. So many factors may contribute to business prosperity that trade agreement statistics are usually inadequate to convince the business man.

[48] The Board of Trade, roughly speaking, is the British counterpart of the United States Department of Commerce. The actual Board of Trade is a body of notables (including the Archbishop of Canterbury, who was supposed to advise on the slave trade); but this body has not met since the early part of the nineteenth century. For more than a hundred years, only the President of the Board of Trade has been active. He is a cabinet minister, and is supported by a large staff of permanent civil servants.

[49] Under the parliamentary form of government, approval of a trade agreement is in most cases a foregone conclusion, since rejection would necessitate the formation of a new cabinet. Agitators for Senate or congressional approval of American trade agreements almost invariably overlook this fact.

[50] United States Tariff Commission, *The Trade Agreement between the United States and the United Kingdom*, Vol. I, p. 39. The agreements were usually made with the purpose of correcting an adverse balance of trade by stimulating the export

assisted by information collected by the Import Duties Advisory Committee.[51] This committee advises the Treasury with regard to adjustments in tariff rates, and in the formulation of its recommendations obtains information of value in assessing the importance to the national interest of protection to various British industries. Industry, if not completely satisfied with all of the duty reductions accorded in the trade agreements, was highly pleased with the record of the Import Duties Advisory Committee in raising duties, and made no urgent request to be consulted before duty reductions were granted in trade agreements. On the other hand, the President of the Board of Trade made it his "usual practice" to ask "representative trade bodies . . . their views as to the tariff concessions which might be sought . . ."[52]

It must be remembered that the tradition in England with regard to the relationship between government and industry is different from that existing in the United States. Even in the 1920's, there was some unity of government and business. The well known Committee on Industry and Trade (Balfour Committee) reported in 1929: "We have noted with satisfaction the growing recognition by government departments of the necessity for systematic consultation with representatives of British manufacturers and traders on questions of the practical application of commercial policy. On these matters the evidence of our trade witnesses was, on the whole, more appreciative than critical . . ."[53] Since the depression, this "consultation" has assumed more significant proportions. Tariffs were imposed for the protection of certain industries at their request. In 1935, the Government imposed temporarily a 50 per cent duty on iron and steel imports in order to assist the industry in joining

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trade of a distressed industry, e.g., cotton textiles or coal. In return for this aid, the export industry submitted to some degree of governmental control; but this usually was conducted on a voluntary basis, nominally at least.

[51] This committee was established in accordance with Section 2 (1) of the Import Duties Act. The President of the Board of Trade (in a letter dated Dec. 22, 1937) stated that the Committee "has within recent years investigated fully the circumstances of most of the industries of the country." *The National Union of Manufacturers Journal* (London), Jan., 1938, p. 3361. Hereafter referred to in this paper as *N.U.M. Jour.*

[52] Great Britain, Parliament, *Parliamentary Debates, Official Reports*, House of Commons, Fifth Series, Vol. 329, Nov. 23, 1937, col. 1053. Hereafter referred to in this paper as *Hansard.*

[53] Final Report of the Committee on Industry and Trade, Cmd. 3282, p. 27. The Report called for "the establishment of a firm tradition that Presidents and high officers of the Board of Trade shall in respect of all important questions of trade relations take the representative leaders of trade and industry so far as practicable into real confidence, at a stage early enough to make consultation fruitful." *Ibid.*, p. 32.

the European Steel Cartel on advantageous terms. Assistance was also rendered numerous other trades.[54] In many cases, this assistance was offered by the Government as a reward to the industry for completing a reform which the Government had deemed advisable.[55] It is obvious that under these circumstances industry in general would not be inclined to fear that the same government would rescind its promise to industry by destroying the preferred position it enjoyed in the home market.

With this background, it is somewhat surprising that certain sections of British industry were so afraid that their interests would be sacrificed by the Anglo-American agreement. However, they feared that the Government would sacrifice economic advantage to secure an agreement desired for political reasons. Furthermore, they were not confident of the ability of the Board of Trade to achieve what they considered the main objective of the trade agreement, namely, securing as valuable concessions as possible in return for as small concessions as possible. Hence they desired to "assist" in the negotiations with the United States.[56]

In an effort to ascertain the items on which concessions from the United States should be sought, the Board of Trade requested various trade bodies to indicate their interests in the American market. In turn, these groups, of which the National Union of Manufacturers, the Association of British Chambers of Commerce, and the Federation of British Industries were the most important, communicated with their members. The replies of these members were then collated by these associations and forwarded to the Board of Trade.[57] In addition, individual trade associations, such as cotton and woolen textiles, may have submitted individual memoranda.[58] Except for the greater scope of the inquiry, therefore, this procedure was not materially different from that previously followed.

Greater pressure was exerted upon the Board of Trade to change its procedure with respect to hearing the objections of industry to a proposed reduction in the United Kingdom duty. It was pointed out early that

[54] J. Henry Richardson, "Tariffs, Preferences, and other Forms of Protection," in *Britain in Recovery* (London, 1938), pp. 129–130; R. G. Swing, "Britain's Experiments in State Intervention," *Foreign Affairs*, Vol. 15, p. 296 (Jan., 1937).

[55] The iron and steel duty was the reward for the reorganization of the iron and steel industry and the formation of the British Iron and Steel Federation. The large government subsidy for the construction of the R.M.S. *Queen Mary* was the reward for the merger of the Cunard and White Star Lines.

[56] *N.U.M. Jour.*, Jan. 1938, p. 3360.

[57] *Ibid.*, Dec. 1937, pp. 3352–3; *The Times* (London), Nov. 30, 1937, p. 9; *Ibid.*, Dec. 2, 1937, p. 22; *Ibid.*, Dec. 21, 1937, p. 14.

[58] The President of the Board of Trade wrote to the President of the National Union of Manufacturers that the Board of Trade follows "the practice of comprehensive and detailed consultation with trade interests." *N.U.M. Jour.*, Jan. 1938, p. 3361.

public hearings were held for this purpose in the United States.[59] The Board of Trade was asked to inform manufacturers if concessions would be given on their products.[60] Mr. Stanley, President of the Board of Trade, gave the official position of the Government as follows: "It is not the practice of His Majesty's Government in trade negotiations to communicate to trade interests the list of commodities in respect of which concessions from this country are being sought, but I am always ready to consider representations from trade organizations who think that their interests may be affected."[61]

The National Union of Manufacturers was not at all satisfied with this assurance. Its first line of attack was to contend that the Board of Trade, as it was then constituted, was not qualified to deal with the United States on equal terms. The suggested solution was the addition (presumably from the National Union of Manufacturers!) of business men.[62] The Board of Trade rejected this proposal by ignoring it. The second proposal was pushed a little more vigorously. The tariff had been revised numerous times by recommendation of the Import Duties Advisory Committee. Before making a recommendation, this Committee made a survey of the industry and asked interested parties for representations.[63] Since the proposed agreement with the United States would involve tariff reductions by the United Kingdom, it was suggested that interested parties make representations to the Import Duties Advisory Committee with respect to any concessions which the United States asked for.[64] This

[59] See letters to Mr. Stanley from Lord Hirst, president of the Federation of British Industries, *The Times* (London), Nov. 30, 1937, and Jan. 14, 1938. The Association of British Chambers of Commerce wrote similar letters, *ibid.*, Jan. 13, 1938, p. 9.

[60] See a letter from Lord Hirst to Mr. Stanley, *The Economist* (London), Vol. 130, Jan. 22, 1938, p. 160. He did not ask that the list of possible concession items be made public, but that industry be informed privately of them.

[61] *Hansard*, Vol. 329, Dec. 2, 1937, col. 2280. See also Vol. 330, Dec. 7, 1937, cols. 174–175; Vol. 330, Dec. 20, 1937, col. 1619; and Vol. 330, Dec. 21, 1937, col. 1761.

[62] *N.U.M. Jour.*, p. 3358. When the proposal was rejected, the Union complained: "Great Britain happens to have the most formidable and powerful business organization of any in the world, and its leaders include a number of ex-cabinet ministers and men who have special knowledge of American conditions, but the last thing the Government thinks of doing in a matter of this kind is to consult the leaders of the business world as to the advisability of embarking on these commercial negotiations at this particular time, or to invoke their assistance in carrying those negotiations through." *Ibid.*, Feb. 1938, p. 3368. The proposal was attacked vigorously in an article in the *Birmingham Gazette*, Dec. 6, 1937. "State interference in industry is bad enough by itself, but it is seen at its worst when it is allowed to come under the direct influence of interested parties."

[63] See, e.g., *Board of Trade Journal* (London), Vol. 142, June 22, 1939, p. 905.

[64] This suggestion was made in two letters to the President of the Board of Trade, the first by the Association of British Chambers of Commerce (*The Times*,

suggestion, too, was dismissed by Mr. Stanley, though of course he made his usual promise to use information from the Committee.[65]

The Government, however, agreed to two compromises. In February, 1938, it announced that representatives of industry could supplement information they had already given by calling in person at the Board of Trade;[66] and this opportunity was widely used. In addition, Mr. Stanley made it clear that on concessions which the United Kingdom might make, the Board of Trade had received the "fullest possible information" from "every single industry which can be covered by these negotiations."[67] Thus, although no concession list was published in the American sense of the term, British industry had the satisfaction of knowing that it had given data and had stated its position on every American request for a concession. Indeed, there is reason to believe that certain British industries were informed of specific American requests.[68] Periodic outbursts from members of Mr. Stanley's own party (Conservative) declaring that industry was not being consulted can be ignored.[69] After the agreement was signed, the Federation of British Industries congratulated the Board of Trade for having consulted industries on a "wide scale."[70]

IV. CONCLUSIONS

The history of trade agreement hearings, both in the United States and in the United Kingdom, has been a history of compromises with pressure groups. In the United States, every one of these compromises

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Jan. 13, 1938, p. 9) and the second by the indefatigable National Union of Manufacturers (*N.U.M. Jour.*, Jan., 1938, p. 3360).

[65] *Ibid.*, p. 3361. [66] *Hansard*, Vol. 331, Feb. 8, 1938, col. 815.

[67] *Ibid.*, Vol. 333, Mar. 29, 1938, col. 1816; Vol. 331, Feb. 8, 1938, cols. 814–5.

[68] *The Times* (London), May 7, 1938, p. 8.

[69] Mr. Williams stated that "every responsible industrial organization in the country has made urgent representations . . . and . . . has received no satisfaction whatever." *Hansard*, Vol. 332, Mar. 1, 1938, col. 904. Mr. Amery (a former First Lord of the Admiralty, 1922–24) said: "Our producers, whether agricultural or industrial, are refused the right to know what is asked, but they are told to open their mouths, shut their eyes, and hope for the best." *Ibid.*, Vol. 333, Mar. 23, 1938, col. 1254. Both of these distinguished members of Parliament would have been dismayed to hear Representative Culkin (New York), in speaking of the proposed Anglo-American agreement, say that in contrast to the "almost complete secrecy" of the United States, "foreign ministries . . . take their business interests into their confidence when negotiating treaties." *New York Times*, Oct. 8, 1938, p. 11.

[70] *British Industries*, "The Anglo-U.S.A. Agreement, Federation's Views," Vol. 33, Jan., 1939, p. 14. The Parliamentary Secretary of the Board of Trade told the House of Commons after the agreement had gone into effect that without the assistance of industry "it would have been very difficult, if not impossible, to have concluded this or any other trade agreement." *Hansard*, Vol. 344, Feb. 23, 1939, col. 685.

has made the pressure groups stronger, aiding them in their ultimate objective of defeating the whole trade agreements program. On the other hand, most of these compromises were made (1) in an effort to secure the passage of the act in 1934, and (2) in an effort to get the act extended in 1937. It is impossible to answer the question of whether or not the act could have been passed or extended without these compromises.

In the case of the United Kingdom, significant developments in procedure were made during the course of the negotiations for a trade agreement with the United States. These changes were produced because of (1) pressure from the outside urging the Board of Trade to follow American procedure, and (2) pressure from within resulting from the need to assist negotiators who were not supported by an organization qualified to deal with the detailed problems arising out of negotiating a trade agreement so extensive in scope. The changes were less extensive than in the United States because the British trade agreements organization, through its previous trade agreement policy, had satisfied British industry that it would not permit serious harm to result from tariff concessions. The American trade agreements organization, on the other hand, had effected real tariff reductions, and American industry feared that the Anglo-American agreement would prove disastrous to important interests.

The changes made in the United States are manifestly of profound significance to the future of American commercial policy. The American trade agreements program was launched in 1934 as an emergency measure after it had become abundantly clear that congressional tariff-making had failed. The Trade Agreements Act was a delegation of legislative authority to the executive. This paper has demonstrated that the history of trade agreement hearings since 1934 has been a story of gradual weakening of the executive's freedom of action—even though such freedom was of late saved from the blow that would have befallen had Congress, in continuing the Trade Agreements Act until 1943, adopted proposed amendments that would have required the ratification of new agreements by the Senate or even by both houses.

CARL KREIDER.

Washington, D. C.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The secretariat of the new Society for Public Administration is now located at 1313 East Sixtieth Street, Chicago, where it will be under the general direction of Mr. Louis Brownlow. The Society will hold its next annual meeting on December 29–30 at the Palmer House in Chicago, in conjunction with the meeting of the American Political Science Association starting one day earlier.

Professor H. Arthur Steiner returned in February from a half-year in the Far East and has resumed his regular work at the University of California at Los Angeles.

Professor Clarence A. Berdahl, of the University of Illinois, is spending a semester's leave of absence in research and writing at Washington, D. C.

During a year's leave of absence from the University of Missouri, Professor W. L. Bradshaw is studying the activities of the Democratic and Republican national committees in Washington, D. C.

At the New School for Social Research, New York City, Dr. Max Ascoli has been elected dean of the graduate faculty of political and social science, in succession to Miss Frieda Wunderlich.

Mr. H. Duncan Hall, formerly a senior officer in the Secretariat of the League of Nations, has been appointed visiting professor of international relations in the coming summer session of Harvard University.

After twenty-seven years of service, Professor J. Clyde MacGregor, of Washington and Jefferson College, died of a heart attack on February 15. His work for the remainder of the semester was taken over by Dr. Alfred V. Boerner, of the University of Michigan.

Professor Harvey C. Mansfield, of Yale University, who has been at Stanford University during the present academic year, will teach at the Portland summer session of the University of Oregon during the coming summer.

Dr. Frederick M. Watkins, of Harvard University, has been appointed assistant professor of political science at Cornell University, and will teach in the fields of political theory and comparative government.

Professor Pressly S. Sikes, of Indiana University, has been appointed state statistician for Indiana. In this capacity, he will supervise the preparation of the annual *Statistical Report*, and also of the state *Year Book*.

Professor Ford P. Hall, of Indiana University, has been appointed a member of the merit system council which will supervise the merit system for the department of public welfare and unemployment compensation division of the state of Indiana.

Professor Charles C. Rohlfing, of the University of Pennsylvania, has been made chairman of the recently organized Pennsylvania Community Forest Council, an organization of federal, state, and local officials designed to promote the creation of community forests in Pennsylvania.

Dr. Walter R. Sharp has resigned his professorship at the University of Wisconsin to become chairman of the department of government at the College of the City of New York. Professor Sharp, who is at present in South America on a Guggenheim fellowship, will assume his new duties in September.

Professor Grayson L. Kirk has resigned his position at the University of Wisconsin in order to accept an associate professorship at Columbia University. He will act as departmental representative for Columbia College and will also teach in the graduate school.

Professor James T. Shotwell, of Columbia University, is chairman of a voluntary Commission to Study the Organization of Peace, with some fifty members. He has also been presiding over a series of programs, "Which Way to Lasting Peace?," over the Columbia network, in collaboration with leading authorities on various phases of international relations.

Dr. A. B. Butts, chancellor and professor of law at the University of Mississippi, will serve as visiting professor of political science in the 1940 summer session of the University of Hawaii, giving courses in American constitutional government.

During the coming summer, Professor John B. Mason, of Fresno State College, will give courses at Claremont Colleges in the fields of international relations and European governments.

At the University of Nebraska, Dr. David Fellman has been promoted to the rank of assistant professor.

Mr. Boyd Martin, of Stanford University, has been appointed instructor at the University of Idaho for the year 1940–41.

Dr. John L. McMahon, for six years professor of political science at Our Lady of the Lake College, San Antonio, Texas, is now instructor in politics at the Catholic University of America.

At Monmouth College, Dr. Robert W. McCulloch has been advanced to an associate professorship.

During the coming summer, Professor Joseph S. Roucek, of Hofstra College, will teach at Kent State University, Ohio.

Dr. Kurt Wilk, lately engaged upon a study of administrative areas for the National Institute of Public Administration, is now teaching at Brooklyn College.

Mr. Marion William Boggs, who received the doctorate in international relations at the University of Chicago this spring, will teach in the University of Missouri summer session. At Macalester College (St. Paul), Dr. Boggs has been promoted to an associate professorship and made head of the political science department.

At the University of Cincinnati, Dr. A. M. Hillhouse, of Davidson College, North Carolina, and for some years director of research for the Municipal Finance Officers Association, has been appointed associate professor of public administration. His work will be primarily with students registered for graduate courses in training for public service.

Dr. Thomas C. Donnelly, associate professor of government at the University of New Mexico, has recently been named a member of the newly organized civil service commission of New Mexico by Governor John E. Miles. For some time, Dr. Donnelly has been serving as special adviser to the legislative reference bureau of New Mexico.

On January 17 and 18, Dr. Benjamin Gerig, formerly a member of the League of Nations Secretariat and now Commissioner of the League of Nations Pavilion at the New York World's Fair, delivered a series of three lectures on the University of Illinois campus, under the auspices of the department of political science, on the general subject of international organization and world affairs. The titles of the several lectures were: (1) "The League of Nations in the Present Crisis," (2) "Neutrality and the World Order," and (3) "Union, Federation, or League of Nations."

On February 23 and 24, Professor Roscoe Pound, of Harvard University, delivered at Lafayette College, on the Fred Morgan Kirby Foundation for Civil Rights, three lectures on "Justice According to Law," the titles of the individual lectures being (1) "What Is Justice?", (2) "What Is Law?", and (3) "Judicial Justice."

Dr. Thomas H. Reed, who served as director of studies of the Republican Program Committee in the preparation of the report of the Republican National Committee made public in March, has resumed his work as consultant in municipal government. He recently served as adviser and expert witness for the city of Richmond, Virginia, in its successful annexation suit against Henrico county, which increased the city's area by nearly forty per cent and added fifteen thousand to its population.

This year's Summer Institute for Social Progress, to be held at Wellesley College July 6–20, will be organized around the theme, "How Can the American Voter Build Democracy in a War-Torn World?" There will be lectures, round-tables, and evening forums; and among leaders will be Professors Peter H. Odegard, of Amherst College, Ernest M. Patterson, of the University of Pennsylvania, and Broadus Mitchell, of Occidental College.

The semi-annual meeting of the Academy of Political Science held in New York City on April 11 was devoted to the general subject of "Economic Nationalism, Trade Barriers, and the War."

The American Council on Public Affairs is now concentrating its efforts upon the sponsorship, publication, promotion, and distribution of scholarly books and pamphlets, with special attention to political and social science. Inquiries concerning its publication program may be addressed to the Council at 1721 Eye Street, N.W., Washington, D. C.

The division of political science at the Florida State College for Women has established an interneship in municipal government. Also, taking advantage of the proximity of the state capital and the coöperation of public administrators, it sponsored its first annual Institute of State Government, April 1–5. Dr. Marian Irish, director of the division, was in charge of the program.

With the aid of a subvention from friends of the University (to be expended in part on fellowships for advanced students), a group of members of the political science, economics, and history departments at New York University have established a special seminar on post-war reconstruction problems. Dean John Musser is serving as chairman of the group and Professor H. P. Jordan as executive secretary.

The Secretary-Treasurer of the American Political Science Association reports that the Personnel Service, edition of 1940, containing 287 records of men and women available for appointment, is now ready for distribution. He urges heads of departments in universities, colleges, junior colleges, and normal schools, and personnel directors of administrative agencies, to make use of this list when considering persons for appointment during the coming year. Copies will be sent to appointing officers upon request. Address Professor Kenneth Colegrove, 305 Harris Hall, Evanston, Illinois.

The thirty-fourth annual meeting of the American Society of International Law will be held in Washington on May 13–15 in conjunction with sessions of Section IX of the Eighth American Scientific Congress. Principal topics to be considered include "Problems of American Neu-

trality," "Changing Concepts of International Law," and "International Law and Organization"; and speakers will include Huston Thompson, Lester H. Woolsey, Joseph W. Bingham, Herbert W. Briggs, Percy E. Corbett, J. Eugene Harley, H. Duncan Hall, and James O. Murdock.

The Second Midwest Political Science Conference will be held at Turkey Run State Park, Indiana, May 3–4. The preliminary program provides for sessions on "Problems of Teaching Political Science," "Emerging Issues of American Politics in the Domestic Field," "Emerging Issues of American Politics in the International Field," and "Aspects of Contemporary Ideology." Professor Charles M. Kneier, of the University of Illinois, is chairman of the program committee; Professor Walter H. C. Laves, of the University of Chicago, of the managerial committee, and Professor John D. Tomlinson, of Wabash College, of the committee on local arrangements.

Sponsored by the National Municipal League and the Minneapolis Civic Council, a regional conference on citizenship and government was held in Minneapolis on February 19–21. Among participants in the program were President C. A. Dykstra, Professors Leonard D. White, William Anderson, Lloyd M. Short, Roy V. Peel, and Roy G. Blakey, and Drs. Howard P. Jones, Walter J. Millard, and C. C. Ludwig; and forums were conducted on taxation, civil service, municipal government, public relief and social security, and employer-employee relations.

Under the joint sponsorship of the Summer School of Harvard University, the Harvard-Yenching Institute, and the American Council of Learned Societies, a Far Eastern Institute will be held at Harvard during the coming summer, from July 1 to August 10. It is designed primarily to meet the needs of university, college, and secondary-school teachers who find themselves compelled to consider the Far East in their teaching, but whose educational experience has not included scientific study of the region. While students regularly enrolled in the Harvard Summer School may also, with the consent of the director, take any of the courses listed in the Institute, as well as the corresponding examinations for credit, the main object of the enterprise is to provide special instruction for a selected group of students to be known as members of the Institute. Information may be obtained from the director, Dr. John K. Fairbank, 41 Winthrop St., Cambridge, Mass.

A program to stimulate studies in the field of international relations, with particular reference to the interests and policies of the United States, has been undertaken by the American Committee for International Studies. Aided by a special grant from the Rockefeller Foundation, the Committee will establish an informal agency of consultation,

liaison, and planning among the many scholars working in this field here and abroad. Edward Mead Earle, of the Institute for Advanced Study at Princeton, is director of research, and William W. Lockwood, formerly of the American Council of the Institute of Pacific Relations, research secretary. Henry M. Wriston, president of Brown University, is chairman of the Committee, and the other members are J. B. Condliffe, Frederick V. Field, Alvin H. Hansen, Calvin B. Hoover, Philip C. Jessup, Chester Lloyd Jones, Frank R. McCoy, Francis P. Miller, C. F. Remer, James T. Shotwell, and Jacob Viner. Although impetus toward this experiment came from the outbreak of war in Europe, the focus of attention will be the interests and policies of the United States as they will be affected by the war and post-war settlement, and the manner in which the experience of the United States with federalism, Pan-Americanism, and Canadian-American relations, and with such quasi-governmental agencies as the T. V. A., may be of significance to Europe. The Committee will seek to stimulate and assist American scholarship by providing certain "clearing" services to scholars, by creating an agency for general planning and recommendation, and by suggesting new projects where the need is found to exist. Its procedures will include staff surveys of studies in progress and informal consultation on research problems and opportunities, and in some instances the initiation and supervision of new studies. Formerly known as the American Coördinating Committee for International Studies, the Committee has been for some years the American member of the International Studies Conference, and will continue to serve in this capacity. The Committee will welcome information and inquiries, which should be addressed to Edward M. Earle, American Committee for International Studies, Princeton, New Jersey.

BOOK REVIEWS AND NOTICES

Freedom and Culture. By JOHN DEWEY. (New York: G. P. Putnam's Sons. 1939. Pp. 176. $2.00.)

This volume by the Nestor of American philosophy, writing at the age of eighty, is one of the most penetrating and stimulating contributions yet made to modern political science. The theory of government is already deeply indebted to Dr. Dewey's previous contributions—*Democracy and Education* (1916), *Human Nature and Conduct* (1922), *The Public and Its Problems* (1927), *Individualism Old and New* (1930), and *Liberalism and Social Action* (1935), not to speak of many other articles and reviews and volumes covering his observations on politics for a generation. This distillation of these works is presented in brief form in the present volume on *Freedom and Culture.* Space does not permit an analysis of the important philosophical background of Dewey, or of his earlier political writings. In a later discussion, I shall deal more fully with the basic philosophy underlying Dr. Dewey's politics and estimate the trends and meaning of his very important work in political science.

The writer discusses and analyzes at the outset the confusion of the modern day regarding the nature and implications of democratic society. Many of the older forms, he points out, have been upset by unexpected economic developments which have brought confusion and uncertainty into the works of popular government and have subjected the whole plan to a basic strain. The government has found it necessary to take on broader functions and to organize these new governmental powers more effectively than before. This combination has brought about a state of affairs in which what he calls "wholesale theories" arise in opposition to one another, such as "individualism" or "socialism"—an antithesis, he maintains, not warranted by experience or analysis.

The facts that justify economic emphasis are not, in Dewey's judgment, to be taken as indicating that the economic interpretation of social relations is a complete explanation either of the present or the future. The idea of a "pre-established harmony between the existing so-called capitalistic régime and democracy is as absurd a piece of metaphysical speculation as human history has ever evolved." Marxism eliminates psychological as well as moral considerations, yet unconsciously assumes the existence and operation of factors in the constitution of human nature which must coöperate with "external" economic or "material" conditions in producing what actually happens. I do not know what Professor Sidney Hook may say after his generous attempt to prove the near Marxian quality of the distinguished Dr. Dewey. "It is ironical," Dewey continues, "that the theory which has made the most display and

the greatest pretense of having a scientific foundation should be the one which has violated most systematically every principle of scientific method"; for science not merely tolerates but welcomes diversity of opinion.

Of Mr. John Strachey's assertion that Communists, in "refusal to tolerate the existence of incompatible opinions . . . are simply asserting the claim that Socialism is scientific," Dr. Dewey says: "It would be difficult, probably impossible, to find a more direct and elegantly finished denial of all the qualities that make ideas and theories either scientific or democratic than is contained in this statement. It helps to explain why literary persons have been chiefly the ones in this country who have fallen for Marxist theory, since they are the ones who, having the least amount of scientific attitude, swallow most readily the notion that 'science' is a new kind of infallibility."

Democracy needs fundamentally a new psychology of human nature, for trust in the "common man" has no significance save as an expression of belief in the intimate and vital connection of democracy and human nature. But the picture of human nature drawn by some of its nineteenth-century democratic defenders was only a sketch of existing institutions generalized as basic laws of human nature. A special type of economic organizations was made the essential condition of free and democratic institutions, he declares, and interference with its profits, a violation of the laws of human nature. Democracy, however, implies faith in the potentialities of human nature in a far broader sense than this. It involves faith in the values of tolerance and in the method of persuasion and discussion. The democratic road is a hard one to take, and backsets will continue to occur, but what is its weakness at a particular time is precisely its strength in the long course of human history.

The question of what is involved in self-governing methods is far more complex in our times than in earlier days, and for this reason the task of those who retain belief in democracy is to revive and maintain in full vigor the original conviction of the intrinsic moral nature of democracy. "We have advanced far enough to realize that democracy is a way of life. We have yet to realize that it is a way of personal life and one which provides a moral standard for personal conduct."

But if democracy is a moral problem, what then is the relation of science to democracy? It is no longer possible, Dr. Dewey maintains, to hold the simple faith of the Enlightenment that the advance of science will automically produce free institutions by dispelling ignorance and superstition. Already the progress of natural science has been even more rapid and extensive than was imagined, but it has also produced unexpected results: in industry, creating corporations and the concentration of capital; giving to dictators new means of controlling opinion and sen-

timent and reducing through organized propaganda all previous agencies of despotic rulers to a mere shadow.

This leads to the old question whether science has any part to play in the formation of human ends and purposes. Liberal and progressive movements based themselves on the principle that action is determined chiefly by ideas, and neglected the importance of emotions and habits in the determination of conduct. In more recent times, the opposite has been true, and the older doctrine has been stood upside down by emphasis on the emotional and non-rational. Science is not, however, in Mr. Dewey's view, merely a body of technical conclusions. It is an attitude embodied in habitual will to employ certain methods of observation, reflection, and test rather than others. Scientific men themselves have often created confusion by disclaiming any social responsibility for scientific results or by advocacy of personal conclusions in scientific terminology and with scientific prestige. The real question is whether science has "intrinsic moral potentialities."

Historically, the position that science is devoid of moral quality has been held by theologians and their metaphysical allies. But if control of conduct amounts to conflict of desires scientifically implemented, with no possibility of the determination of desire and purpose by scientifically warranted beliefs, then the practical alternative is only competition and conflict between unintelligent forces for control of desire. To say that there are no such things as moral facts because human desires control formation and valuation of ends is in truth but to point to desires and interests as themselves moral facts requiring control by intelligence equipped with knowledge. If, says Dr. Dewey solemnly, science is "incapable of developing moral techniques which will also determine these relations, the split in modern culture goes so deep that not only democracy but all civilized values are doomed. . . . A culture which permits science to destroy traditional values but which distrusts its power to create new ones is a culture which is destroying itself. War is a symptom as well as a cause of the inner division."

Liberty and democracy must in the end be set in a framework of culture and of human nature without which it has no enduring meaning, without which it has no power of adaptation and adjustment. The most serious threat to our democracy is not the existence of totalitarian states; it is the existence within our own personal attitude, and within our own institutions, of disordered and unintegrated conditions similar to those which have given a victory to external authority, discipline, uniformity, and dependence upon the Leader in some foreign countries. The battlefield is also accordingly here within ourselves and within our institutions. This battle Dewey asserts can be won only by extending the application of democratic methods, methods of consultation, persuasion, negotiation,

communication, coöperative intelligence, all in the effort to make our politics, industry, education, and culture an evolving manifestation of democratic ideas. "An American democracy can serve the world only as it demonstrates in the conduct of its own life the efficacy of plural, partial, and experimental methods in securing and maintaining an ever-increasing release of the powers of human nature, in service of a freedom which is coöperative and a coöperation which is voluntary."

This is not an easy volume to read or to review fairly. In arrangement, it is somewhat disorganized, and the discourse is at times repetitive. Some of the paragraphs are condensed to a point where they require many readings to interpret. But it must be said that if one must search, there is much to be found. Dr. Dewey's *Freedom and Culture* is a gold mine which students of political science cannot afford to pass by. I do not know of any study which examines more sharply and intelligently the basic problem of human relations that threatens the whole civilization of the Western world. If Dr. Dewey had known more of economics, of politics, of administration, and of law, he might have written with greater sophistication and sureness in these fields, but he might have lost the broad sweep and perspective of his present view. The design of lifting the problem of democracy above economic determination, above emotional violence, above outdated psychology, tribal or industrial, and of elevating the discussion to a scientific-moral, cultural basis, is a noble and challenging one, even if not fully achieved.

CHARLES E. MERRIAM.

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Modern Political Doctrines. By ALFRED ZIMMERN. (London and New York: Oxford University Press. 1939. Pp. xxxii, 306. $2.50.)

The Story of the Political Philosophers. By GEORGE CATLIN. (New York: McGraw-Hill Book Company, Inc. 1939. Pp. xvii, 802. $5.00.)

These two books have little in common save that each is concerned with political theory and each divided into four parts. Professor Zimmern's volume is a series of selections from the works of thinkers about politics, both statesmen and philosophers, from the time of Burke onwards. Professor Catlin's text is an interpretative history of political thought over a period of two thousand years. Zimmern's division is on what might be called a functional basis, the titles of the various parts being: government; the economic problem; nationality, nationalism, and racialism; and the problem of international order. Professor Catlin's division is partly chronological and partly topical. The first part of his work runs from the beginnings down to Thomas Hobbes. The second is concerned with the individualist and empirical schools from Locke to modern anarchism. The third is devoted to idealism, materialism, and

modern anti-intellectualism, or, more generally, to the various progeny of Jean Jacques Rousseau, with whom the section opens. The fourth part, consisting of a chapter entitled "Conclusions and Prospect," includes discussions of the modern sociological and scientific schools of politics, and contains Catlin's own philosophy and faith.

In terms of purpose, however, despite their great differences in content and in approach, the works are not entirely dissimilar. Professor Zimmern prefaces the admirable selections with an introduction which is a justification for making them and for the classification made of them—a classification which arises from what seem to him the central problems of present-day states and of the present world community. Professor Zimmern is clearly a believer in the democratic way and, as is well known, in the need for international coöperation. But he realizes that the affirmation of a faith and the statement of the argument for his position are in themselves not enough. We have to understand, historically and philosophically, the reasons for the development and espousal of various current doctrines, even though we may hate many of them. We have further, as scientists, to comprehend their dynamic impacts and interactions. His selections, then, are made with the deliberate intent of throwing light on these matters, not because he believes that *tout comprendre, c'est tout pardonner*, but because wise action requires clear analysis and comprehension.

Mr. Catlin is equally concerned with these problems, and in a very real sense his work is a sustained inquiry into the intellectual forces in the Western tradition tending towards, and making for effective opposition to, current anti-intellectualism. Essentially, he seems to believe that the whole history of political thought hitherto has been taken up, first with the inextricable mixing of potentially totalitarian, hierarchical, and anti-rationalist elements with universalist ethics and empirical science, and then with their gradual separation, until today the lines are rather clearly drawn, and we have, on the one hand, the reactionary development (including Marxian radicalism), with an increasingly pure impurity of pseudo-philosophies, glorifying the brute in man, while, on the other hand, we have more and more clearly the emergence of a true political science, empirical to the core, but rather nicely combining with its scientific analysis of political behavior a sound philosophy of natural law, ethical in character, but itself surely established on science.

The divisions of his work essentially arise from this thesis. The first part shows how the Greek thinkers, Plato and Aristotle, while not properly concerned with politics in any modern sense, combined many potentially fascist doctrines with a genuinely rational universalism, and, in the case of the latter, with the establishment of a scientific method, which was unfortunately corrupted by these other elements. Rome is

interpreted by Catlin in the main after the Spenglerian model as a "late" civilization, formalized and uncreative. But in it arises Stoicism which, if it contained the seeds of an unscientific natural law doctrine that was to plague thought right through post-Kantian philosophy, also had in it the well-springs of a genuine natural law on which a scientific ethic might be based. The story from Rome to Hobbes is the story, on the one hand, of the proliferation, and, for awhile, ascendency of unrealistic theorizing, and on the other hand of the emergence of the nation-state, accompanied by the rebirth, in the doctrines of sovereignty and power politics from Machiavelli and Bodin through Hobbes and Spinoza, of scientific method, itself perverted either by cultural lags or by use in the service of new, necessary, but inadequate institutions.

Part two deals with the foundations of a union of empiricism, individualism, and constitutionalism, springing up in the course of the political struggles of seventeenth-century England, from which might be derived a satisfactory philosophy-science for the present day. But it itself tended in the eighteenth and nineteenth centuries to become perverted by a cult of reason that ended up with men as isolated atoms, without adequate recognition of their social nature. This was the result, on the one hand, of *a prioristic* speculation, and, on the other, of the subtle impacts on the later men of the school of that romanticism which leads into the forest of anarchy, when it does not descend into the deep dark pit of blood and naked force. It is with this school in its various manifestations that the third part is concerned. Catlin shows its origins in Rousseau, the sentimental source of all our woes; its development through Hegel, who, unfortunately, combines the sound theory of dialectic with the unsound doctrine of determinism; through Kant, who rationally systematizes the Romantic insights in an academic, intellectualistic, and moralistic philosophy that lacks contact with ordinary experience; and through Marx, who inverts Hegel and classical economics, but, going to extremes, makes materialism itself, nominal enemy of the metaphysical, the romantic, and the individualistic approaches, a matter of force, and so no less destructive of scientific rationalism and rationalist empiricism. The later thinkers of these schools, whether conservative Hegelians from Carlyle to Treitschke, post-Marxians from Kautsky to Strachey, or the pure men of blood, deifying state or nation, like Mussolini and Hitler, simply complete the sad work begun by the citizen of Geneva.

Today, happily (and this is the theme of the last part) we have the basis for a sound political science, provided we will accept the brilliant techniques and the scientific laws propounded by the Chicago school of Merriam, Lasswell, *et al.*; the ethical insights of the legitimate, though in some respects unduly anarchistic, heir of Locke and Jefferson, Bertrand Russell; and Catlin's own teaching that a genuine political science will be

achieved only when we accept the concept of a political man, analogous to the economic man of classical doctrine, as a basis for analysis of power, the essence of politics. In the reviewer's judgment, Professor Zimmern, in his modesty, is the truer scientist.

THOMAS I. COOK.

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Die Hegemonie—Ein Buch von Führenden Staaten. BY HEINRICH TRIEPEL. (Stuttgart und Berlin: W. Kohlhammer Verlag. 1938. Pp. xv, 584. RM. 13.50.)

This enormous volume constitutes a highly important work which I think will last. The author, a retired professor of public law and a former *Rektor* of the University of Berlin, has now, after many significant contributions in the fields of public and international law, undertaken a task which can properly be called pioneering. He has made the most comprehensive and many-sided efforts to analyze, both deductively and inductively, one of the central phenomena of individual, group, and state life, which we call hegemony. This fundamental concept has received, until now, only occasional and fragmentary consideration.

At the present time, after the Nazi *Gleichschaltung*, one hesitates to read a German book dealing with social, political, or moral problems. In the present case, distrust should be even greater, because the central topic of the book is the category of the *Führer* and of *Führerschaft*. Therefore it is only fair to state at the beginning that the work of Herr Triepel has nothing to do with that propagandistic literature which has so strongly damaged the prestige of German scholarship. It may be sometimes ultra-conservative for our taste, but it cannot be doubted that the volume is written entirely in the spirit of that German *Gründlichkeit* and exhaustiveness which was the chief characteristic of pre-Nazi German science.

This judgment is substantiated by the fact that the colossal literature upon which the author has built up the edifice of his system is, in the overwhelming majority of cases, the best German and international literature on the subject. These references alone would make the volume very valuable. But also from the point of view of individual research, the book is a significant presentation of problems and tentative solutions. In a time when the attention of the whole civilized world is concentrated on the possibilities of various federal structures, the present work can be regarded as an extremely useful guide, even for those who do not find its conclusions satisfactory.

As a matter of fact, Herr Triepel was not influenced by the present world currents; he finished his work in 1937. He wanted to remain purely objective and descriptive, neglecting any considerations of the "ought-to-be." But not even a German scholar of this tendency can avoid the in-

fluence of his values, conscious, sub-conscious, or obligatory. So, for instance, the most shocking discord in the book is his reverential bow, on the last page, to Hitler and Göring.

In order to lay the necessary psychological and sociological foundation, the author gives a minute analysis of the various phenomena involved in leadership. He elaborates a general typology of the outstanding qualities of the *Führer*, which he recognizes, though in substantially modified forms, also in cases in which not an individual, but a group, an estate, a nationality, or an economic organization, assumes leadership. For the author, hegemony is before all a moral force; it is the greatest possible antipode to coercion or violence, and it is intimately connected with the category of authority. "The softer the pressure, the more genuine is the leadership." Therefore, leadership means ultimately a government by consent; it involves a free attachment on the part of the followers. The real leader has no office, at least in the most significant formative period of his development.

The author devotes the most important part of his book to the Leading State. He gives a penetrating discussion of the causes of hegemony, of the relation between hegemony and law, of the technique of hegemonial policy, and of the various types of hegemony in interstate relations. He emphasizes the differences between the hegemony in the group of two and in organized forms of international coöperation. He analyzes the concrete historical reality from the point of view of leadership among the states. One can say without exaggeration that the whole of world history is here presented from this angle. Palestine, China, the Greek city-states, Rome, the Middle Ages, the republic of the United Netherlands, the French hegemonies during the Revolutionary period, and finally, the growth of German unification—all these and many other related phenomena are reviewed, not as hasty and arbitrary examples taken from here and there for the illustration of the favorite theories of the author, but as a comprehensive, acute, and systematic study based on a stupendous historical knowledge.

Even recognizing and emphasizing all these unusual values of the book, the reviewer cannot suppress the feeling that the author did not accomplish what he promised: to show the "sociological and jural structure of the individual hegemonial phenomena." We see always, mostly very accurately, the various jural structures, but they remain generally in a kind of *staatsrechtlich* vacuum. To give only one example: when the author tries to illustrate his thesis, that hegemony is often a transitory step toward complete unity, he points to the absorption of Prussia by the Reich. Doing this, he considers only purely jural categories, without the slightest reference to the enormous social, moral, and economic crises which made Prussia, after the War, the champion of unity and, later,

after the growth of the reactionary forces, the champion of particularism. In order to explain these fundamental events, the author simply compares the post-Weimar developments with the Prussian policy of the *Fürstenbund* in the year 1785 (p. 577).

This insufficient sociological foundation of the book is the main reason why, after having studied this monumental synthesis, one feels the lack of any fruitful generalization, of any moral guidance, or of even pragmatic help for the understanding of the hegemonial struggles of many centuries. The reviewer cannot help thinking what a magnificent work the authors of the *Federalist*, or de Tocqueville, or Lord Bryce could have produced with this wealth of material, or even a small part of it!

OSCAR JÁSZI.

Oberlin College.

A Prologue to Politics. By CHARLES E. MERRIAM. (Chicago: The University of Chicago Press. 1939. Pp. ix, 118. $1.50.)

"The emerging type of ideal state *must* be able to supply a unity of purpose and program, embodying values and interests . . . " Thus Professor Merriam sets the ideal as achievable, while at the same time insisting upon a fundamental agreement which seems incompatible with democratic life as we know it. The capacity to agree to disagree, and hence to manipulate conflicts of purpose, value, and objective appears even in the democratic ideal of tolerance. Merriam himself seems ready to abandon unity of purpose in a moving sentence, dealing with the coming world order: "In a moment when the world rushes forward perhaps to its most terrible, titanic, and destructive war, I see somehow an end of violence. I see an epitaph written large—an epitaph not of civilization but of war." Merriam gladly accepts the challenge that he is "something of seer." Indeed, he believes in the inventive task of the political scientist. "On every level of government there is need for inquiring and inventive minds to aid in the gigantic task of readjusting the units and functions of government to modern times."

This slender volume is essentially a *credo*. In four brief chapters, this *Altmeister* of American political science discusses the organization of violence and of consent, the ideal state, and the tasks of politics. As a firm believer in gradual progress, he dislikes violence, but he recognizes with scholarly detachment its ubiquity in political situations. His contrasting of violence and consent gains color and political significance through the narrow scope which he gives to the term: "I am using the word violence with reference to physical force in its raw forms. The lash, the prison, the sword . . . ." Having thus narrowed the concept, he readily persuades us once again that we want to get away from it as much as possible.

The difficulty in such an approach results from the temptation to accept consent as its comprehensive opposite. But is it really a question of *either* violence *or* consent. Some time ago, I suggested as broad hypotheses for political science that consent and constraint are both real forces, generating power. Constitutional democracy, like any other political pattern, has to rely upon both, and its pecularity is to be found in how it organizes constraint (a broader concept than Merriam's violence) just as much as in its organization of consent.

Merriam recognizes the organization of consent as the greatest problem of our day. This is very true; it has been the greatest problem of all political societies. Traditional democratic theory took too much for granted when it identified consent with majority rule. Maybe that is as near as we can come to it; but, as Merriam rightly insists, "one generation cannot be presumed to control another in the fundamentals of political order."

One charming feature of this condensed statement of Merriam's major premises is the occasional apt phrase behind which one can hear his genial chuckle. Take for example his brief reference to Lloyd George's *War Memoirs* in its emphasis upon "civilian judgment," followed by the aside: "Of course, he does not contend that he was always wrong."

I think that Professor Merriam has given us a very definite "prologue" to his "politics." *Power, The New Despotism*, and another volume yet to come develop the basic assumptions here laid out.

CARL J. FRIEDRICH.

Harvard University.

Constitutionalism and the Changing World. By CHARLES H. MCILWAIN. (New York: The Macmillan Company. 1939. Pp. viii, 312. $4.50.)

Professor McIlwain has collected fifteen papers for publication in this book. A few of them date back a quarter of a century. These are the longest papers in the book and represent some of the important contributions which Professor McIlwain made to the history of English constitutional development and institutions. The paper, "Due Process of Law in Magna Carta," was first published in January, 1914; another, "Magna Carta and Common Law", was published by the Royal Historical Society in 1917 as one of the "Magna Carta Commemoration Essays." Thus they deal with events more than seven hundred years past. Others, first read or printed only one or two years ago, deal with the immediate present, with the dangers of constitutional liberty which have arisen in the thirties of our century in Europe and in the United States. Some of these essays are purely the work of an historian, others seems to address themselves to a larger public and to voice the anxieties of a man deeply concerned over the trends of the day. This is no accident; it is based upon the author's

deep conviction of "the disastrous results of our unfortunate divorce of history and politics." History can help us to clarify some of the fundamental political notions. In this book, a distinguished historian sets himself the task of clarifying for the benefit of the present two of the fundamental notions dominating our political life, that of sovereignty and that of constitutionalism.

The two are closely interconnected. Professor McIlwain repudiates the definition of sovereignty, as derived from Hobbes and Austin, that it is an unlimited, and therefore arbitrary, supreme power. Only the denial of such a sovereignty, including the sovereignty of parliament or the sovereignty of the people, makes bills of rights possible. As the medieval king was, to quote Bracton's phrase often used in the book, king under the law that made him king, so modern governments must also have their legal bounds. The state, to be a just state, must bow before the majesty of law. Since the days of the Stoic philosophers, we have learned that it is not the state that makes law, whereby we would arrive at what the present Nazi theoreticians call *Situationsrecht*, but the law that makes the state, the *Rechtsstaat*, which the Germans have at present abandoned. With one word, the constitution limits the sovereignty. "The true glory of England's institutions lies not in her representative parliament, but in the fact that through it she has preserved her ancient liberties and made them more secure and more general." And Professor McIlwain pleads "against any weakening of our constitutional limitations of power, even the power of the people themselves; in the interest of individuals or minorities among the people . . . we must preserve and strengthen those bounds beyond which no free government ought ever to go, and make them limits beyond which no government whatever can ever legally go." Thus we arrive at a sovereignty limited by inalienable rights. For liberalism is constitutionalism, "a government of laws and not of men," a common weal of individual rights that no "sovereign" has any authority to impair.

This liberalism would have been listened to with less attention a few years ago than it will be today. Meanwhile it has become clear that the "one great issue that overshadows all others today is the issue between constitutionalism and arbitrary government," that after all "a lawless autocracy is worse for mankind than even the feebleness of democracy." The struggle for constitutionalism has been a long and hard one during many centuries. In some of the papers collected in this book, Professor McIlwain unfolds for us some important chapters in this struggle. At the beginning of the twentieth century, this struggle seemed almost won. Today its results seem endangered or even swept away. Professor McIlwain sees as one of the most disquieting aspects of the present situation the fact that the alliance between the liberal constitutionalists and the

social reformers which characterized the nineteenth century is broken. In times like the present, social reforms seem more urgent than they seemed in quieter periods. Come they must; but the question is whether by the method of law—constitutionalism is nothing else but the method of law—or precipitately with disregard of law, even if this disregard springs from benevolent intentions. We should not forget that even if the "law has perpetuated some abuses, it has also preserved our liberties." This creed of liberalism is set forth in the book with an urbanity and an erudite humanism which every reader will deeply appreciate.

HANS KOHN.

Smith College.

Democracy versus Socialism. By MAX HIRSCH. (New York: Henry George School of Social Science. 1939. Pp. xxx, 468. $2.00.)

Two Systems: Socialist Economy and Capitalist Economy. By EUGENE VARGA. (New York: International Publishers. 1939. Pp. 268. $2.50.)

To Max Hirsch, Henry George was the "prophet and martyr of a new and higher faith"; while for Professor Vagra it is obvious that no panegyric of Stalin could be too fulsome, nor any doubt entertained regarding the imminence of paradise in the Soviet Union.

Hirsch's book, first published in 1901, is an able exposition of the single tax doctrine, embracing criticisms of the economic and ethical bases of socialism and an endeavor to show that all schemes for social reform except the Georgian must result in tyranny, inefficiency, and retrogression. A curious faith in the beneficence of what Hirsch exalts as "unconscious coöperation" pervades the whole argument: social planning is frowned upon, partly because it "utilizes only an insignificant part of the intelligence of the coöperators," while "unconscious coöperation utilizes the whole sum of their individual intelligences" (pp. 282–283). The crucial point in any single tax argument must be the effort to show that the evils of private ownership of instrumentalities of production can be traced without exception to private reception of land's economic rent. That this is a large factor, no socialist would deny; but it is doubtful whether Hirsch, despite a very elaborate treatment, has been completely convincing in making it the sole cause.

Professor Vagra undertakes to examine comparatively capitalist and Soviet Union economic systems. Thus, he investigates, with the aid of numerous statistical tables, "Capitalist Accumulation and Socialist Accumulation," "Industrial Production under Capitalism and in the Soviet Union," "Agrarian Crisis under Capitalism: Growth of Agriculture in the Soviet Union," and so on. In each instance, he discovers that "capitalism" is utterly bankrupt; while the Soviet Union is solving its difficulties

so rapidly that the advent of a pure Communist régime will not be long postponed. The author looks forward, "in the not very distant future," for example, to the complete disappearance of money; and even the "lies and calumnies of the fascist mercenaries" can no longer obscure the fact that "workers in the Soviet Union are freed from all exploitation, from all oppression" (p. 171).

This is a good Communist campaign textbook; but as a treatment of comparative economic systems it would have been much more effective had obvious over-statements been avoided and an endeavor made to raise the plane of argument above the level of party polemic. Despite the elaborate statistics, it is difficult not to reach the conclusion that the author began his study with a vision of what he thought should exist, and then, conveniently enough, found his vision confirmed in every detail.

MULFORD Q. SIBLEY.

University of Illinois.

Law and Politics; Occasional Papers of Felix Frankfurter, 1913–1938. EDITED BY ARCHIBALD MACLEISH AND E. F. PRICHARD, JR. (New York: Harcourt, Brace and Company. 1939. Pp. xxiv, 352. $3.00.)

Except possibly Supreme Court Justices Holmes and Cardozo, no one had so completely revealed the map of his mind prior to donning judicial robes as had Felix Frankfurter. For twenty-five years, he has been speaking out on the principal controversies of the day, especially as these related to social justice, to the Constitution, and to the Supreme Court. His occasional papers, according to Editors MacLeish and Prichard, "chart the social and economic and political thinking of a man who may well sit on the Court for the next quarter-century" (p. xi). Perhaps more than that. Certain of these essays stand as a measure of Mr. Frankfurter's forthright courage, as in his masterly and moving defense of Sacco and Vanzetti.

For Mr. Frankfurter, the raw material of modern government is business—taxation, labor relations, housing, agricultural control, banking and finance. Political functions in relation thereto are, in fact, but phases of a single problem—the interplay of economic enterprise and government. The interworking of economics and politics has never occurred without some degree of guidance, of control. Private interest, directly or indirectly, has from time to time devised its own controls, usually at the expense of the general welfare. Mr. Frankfurter had long been urging that state and federal government function as regulatory constructive instruments of social policy. There are, of course, several constitutional powers on which such government may draw in protecting and promoting our social well-being, but taxation must, he thinks, play the dominant rôle in years to come: "More and more it [the taxing power] is bound to serve as a

powerful means for directing the modern flow of wealth to social uses. The historical ambitions of American democracy and fiscal necessities alike demand it" (p. 51).

Responsibility for positive action to serve these ends rests primarily with the legislators. Nor does the Constitution necessarily block their efforts to achieve a more useful industrialism, to reconcile modern economic forces with the needs and demands of democracy: "By its very conception the Constitution has ample resources within itself to meet the changing needs of successive generations" (p. 48). "In essence," he declares, "the Constitution is . . . a way of ordering society, adequate for imaginative statesmanship, if judges have imagination for statesmanship" (p. 117).

The heavy responsibility for this process of adaptation rests upon our courts. Their work, however, is not that of governing. The judiciary is not an engine of social purpose, but rather "the brake on other men's actions." The subtle essence of its business is not to decide whether legislation is wise, but whether legislators could reasonably believe it to be wise. Thus, for Mr. Frankfurter, the nature of the Court's work is as delicate as its scope is limited.

Too often the efforts of students of constitutional law are exhausted in doctrinal hair-splitting, in detecting flaws in judicial exegesis. Though Mr. Frankfurter does not neglect this aspect, he knows that judicial opinions, even when uttered in dissent, afford but inadequate index to the minds of justices. The vital rootage of constitutional interpretation is buried in the cultural and psychological background of the Justice prior to his going on the Bench. Until his early life and work are understood, the shifting course of our constitutional history can be studied but vaguely or not at all. Some of the best of these essays must be added to our meager list of studies in judicial biography—for example, the thumbnail sketches of Holmes, Brandeis, Cardozo, and Taft. Mr. Frankfurter's incisive comments furnish a valuable and fairly accurate indication of what we may expect from him as a Justice.

Development of constitutional doctrines in the light of judicial personality has been too long neglected by students of politics, perhaps because they have been overly ready to accept the Court's own version of its function, namely, that judicial review does not involve the exercise of will, much less of power, unless it be merely the power of judgment. Accordingly, constitutional interpretation consists in finding clear meanings which can be clear only to judges. To others, even legislators and executives, the meaning is necessarily hidden and obscure. And, furthermore, the judicial version, unlike that of other men, has the peculiar virtue of never mangling, distorting, or changing the original instrument.

Mr. Frankfurter shows on almost every page how remote this theory is

from fact, and to him perhaps more than any other lawyer-publicist must go the credit for informing laymen and students alike as to the nature and power of the Supreme Court—that is, as to its dynamic rôle in politics. Through effort such as his (with the able assistance of the dissenting Justices), Americans generally understand nowadays that judicial decisions are not, to borrow Max Lerner's words, "babies brought by constitutional storks." Chief Justice Taft himself discredited the official theory in telling why the Bench was peculiarly attractive to him: "Perhaps it is the comfort and dignity and power without worry I like."

Mr. Frankfurter is not at so much pains to deny that judges are especially fitted to be arbiters of public policy. He does urge that we face the fact that while any five Justices of the Supreme Court may be conscious moulders of public policy, they are not an impersonal vehicle of revealed truth. As he puts it: "Constitutional law, in its relation to social legislation, is not at all a science, but applied politics, using the word in its nobler sense" (p. 6). The judge ought to be and usually is a party man. That may be inevitable, but what is of primary importance is that he be a constructive statesman. This latter demands, Mr. Frankfurter believes, "a ready sense of the need for alteration—perhaps the most precious talent required of the Supreme Court" (p. 49).

A query often raised, but not yet settled, concerns Mr. Frankfurter's position on President Roosevelt's ill-fated Court reform plan of 1937. One's guess is that he was for it. However, when the LaFollette suggestions were under discussion in 1924, he opposed using "mechanical contrivances when dealing with a process where mechanics can play but a very small part" (p. 16). Nor was it enough to put the "fear of God" into the judges every so often, as was done by Jefferson, Jackson, Lincoln, and the two Roosevelts. Such procedure, Mr. Frankfurter held in 1924, is "too capricious, too intermittent," evanescent. Later on, in 1934, the future Justice expressly opposed tinkering with the number of judges: "There is no magic in the number nine, but there are limits to effective judicial action" (p. 28). "Experience is conclusive that to enlarge the size of the Supreme Court would be self-defeating" (p. 28). The power of the Court, he conceded, should be limited. This could best be accomplished, he then thought, by doing away with the due process clauses, a measure strongly pressed in certain quarters as a substitute for President Roosevelt's "mechanical," or "fear of God," device. Mr. Frankfurter reasoned: "No nine men are wise enough nor good enough to be entrusted with the power which the unlimited provisions of the due process clause confer" (p. 16).

And yet the Court still wields power within these vague contours, and within others equally broad, as to which, in Holmes' words, only the sky is the limit. Whether the given task is discharged well or ill depends now,

as always, on the judges themselves, their largeness of social outlook, their awareness of how judicial decisions affect public policy, their sensitiveness to inescapable but enforceable responsibilities. These are the qualifications for judgeship as stressed in this timely and readable volume. By such tests, one may safely predict for Justice Frankfurter a career marked by high judicial statesmanship.

ALPHEUS THOMAS MASON.

Princeton University.

The Invisible Tariff. By PERCY W. BIDWELL. (New York: Council on Foreign Relations. 1939. Pp. ix, 286. $2.50.)

The tariff talk of today is sprinkled with a nomenclature which was unheard of a generation ago. This has gradually developed in the discussions and writings of those concerned with customs regulation—a fairly restricted fraternity. As an ex-member of this select group, Professor Bidwell discusses, in terms simple enough for the lay reader, the extra-tariff controls which have been devised and developed in recent years. These are now so numerous and varied in character that a complete cataloguing of them would be impractical. The author does not attempt the impractical. Instead, he classifies and discusses the operation of a great number of the most commonly used devices for either restraining the free flow of foreign trade or putting its control into administrative hands.

The volume is a model of objectivity. Dealing with a subject so filled with controversial matter that every semi-literate American will voice an opinion on it at the drop of a hat, the author studiously avoids the expression of categorical opinions. Only a former member of the Tariff Commission's staff of economists could succeed so well in keeping a discussion of this subject free from political bias. The facts are stated. The reader is left to draw his conclusions. A summary statement is included in the introductory chapter, but there is no recapitulation at the end.

Part I of the volume deals with the formalities of customs administration, the protection of American business against unfair competition from abroad, and administrative controls which modify or reënforce the protectionist system. In covering these topics, the author is not blazing a trail. But his discussion is based essentially upon primary sources, many of which are of recent origin, thus giving it freshness. Also, it covers certain phases of the subject more thoroughly than anything since Professor Viner's excellent study, *Dumping*, published some eighteen years ago.

Professor Bidwell makes a real contribution in the second half of his book, which deals with the use of the police powers to effect economic protection. The control of the imports of animals and animal products and of plants and plant products in the name of public health, safety,

and morals has come to be one of the most effective weapons in the hands of the protectionists. The problem of where to draw the line in the matter of excluding insect-bearing plants is not a simple one, since to be strict in this all plants would have to be excluded. Insects of some kind are to be found in almost all plant life. In a similar way, a quarantine on cattle and the meat from cattle being exported from a country in which anthrax may be found may mean virtually an embargo on these things. Any cattle-growing country of commercial importance is likely to have anthrax is some localized area. The whole of Patagonia, while free of anthrax, has been under such sanitary restrictions simply because isolated cases of the disease were known to exist in the northern part of Argentina, hundreds of miles away. Federal legislation of this kind has been supplemented by many comparable state laws.

"The steady extension of government regulation of domestic business . . . ," says the author "is generally recognized as a leading characteristic of our economic history of the past half-century. It is not so generally recognized that each new extension of the police powers of the state and national governments over domestic production and trade has been accompanied by corresponding administrative controls over imports" (p. 15). Lest the reader go away with the impression that the control of foreign trade was born of internal regulation, it should be emphasized that the tariff and certain administrative controls in the field of foreign commerce long antedated most of the internal regulation. Then came organized labor's pressure for a place in the sun. And more recently the agrarian groups have stood firmly upon the platform of protection for farm prices, to put them on a parity with those of industry. The net result is more protection of everything and everybody, and more regulation.

JOHN DAY LARKIN.

Armour Institute of Technology.

The Federal Income Tax. By ROY G. BLAKEY and GLADYS BLAKEY (New York: Longmans, Green and Company. 1940. Pp. xxvi, 640 $7.50.)

A well-stocked library for anyone interested in taxation should contain at least three books on the federal income tax: one to explain in detail the law, its regulations and their interpretation; one to analyze the important issues of policy in federal income taxation (such as what to do about capital gains and losses, undistributed profits, and the graduation of corporation tax rates); the third to present the evolution of the income tax and to explain the features of the tax in their historical setting. It is the last of these three books that the Blakeys have written. Except that they confine themselves to American experience, they have done for this

generation what Professor Seligman, with his book on the same subject, did for the last.

The Blakeys' book is buttressed with extensive documentation and is obviously based on exhaustive and painstaking research. The authors present a large amount of detail, but have lightened their pages with many quotations, biographical comments, and other matters of lively human interest.

Four-fifths of the book is devoted to a chronicle of the federal income tax, from the Civil War period to the present, including the economic and political setting, the debates in Congress, the resulting legislation, and its interpretation by the courts. Our federal income tax was revised every two years from 1924 to 1934, and since then every year. One is impressed as he reads these pages with the pace at which our experience with this tax has developed; it seems that we have telescoped a century of experience into about twenty-five years. Some lag in the conditioning of the taxpayer is to be expected.

There is nothing new, it seems, in income tax institutions. For example, the much-mooted undistributed profits tax of 1936 was anticipated during the Civil War period by the inclusion of undistributed earnings in the tax base of the stockholder; during and after the World War, T. S. Adams proposed taxing undistributed profits and Senator Jones of New Mexico persistently introduced legislative amendments embodying this idea.

The last fifth of the book is devoted to a discussion of the definition of income, rates and exemptions, administration, and the propriety of the income tax. The authors reject the proposition that one definition of income will serve for all purposes; they lean toward Professor Haig's view that income for tax purposes should consist of the net accretion to economic power between two points of time.

Concerning administration, the authors submit certain tests of efficiency. Is auditing up-to-date? Does the taxpayer get an even chance to have his side presented? Is the administration used for political purposes? Is personnel chosen on a merit basis? They find that the federal administration meets most of these tests with credit, but there is some evidence of political abuse and some room for improvement in the selection of a considerable part of the personnel.

Extensive diagrams, tables, and charts are used to present data concerning machinery and personnel of administration, the rates in different years, comparison of British and American effective rates, the number of returns and amount of income by brackets, cases unaudited and reopened, etc. The authors conclude that "no other important tax is more in harmony with ideals of democracy."

The layman can glean much from this monumental work, and certainly the tax specialist can ill afford to be without it.

HAROLD M. GROVES.

University of Wisconsin.

The Treasury and Monetary Policy, 1933–1938. By GRIFFITH JOHNSON, JR. (Cambridge, Mass.: Harvard University Press. 1939. Pp. 224.)

Coming at a time when published material on the subject is confined largely to piecemeal treatment in periodical literature, this study is an excellent correlation of the most important elements comprising recent monetary history. It purports to deal only with American monetary experience under Roosevelt. But so skilfully does it interweave the broader monetary associations in time and place that the book is to be commended also for its information and insight into world monetary history generally.

Selecting the policies and programs dealing with gold, the Stabilization Fund, sterilization and silver, the author describes the conditions out of which each arose, the objectives sought to be attained, the operations involved, and the results achieved. The Great Depression put an end to independent central banking—or rather that "mirage" so carefully nurtured in the twenties that "politics and money could be kept apart in troublous times." It also dealt the final blow to traditional theory which charges central banks with the function of transmitting the repercussions of gold movements to the domestic credit structure and price levels. In the United States, inflationist and political forces seeking cheap money, higher prices, and monetary support for domestic programs forced the abandonment of gold, gave political agencies dominant control over central banks and monetary policy, and set the government upon a course of experimentation of fantastic conceptions and proportions.

With sparing but illuminating detail, the author calls the roll of these experiments: unnecessary gold abandonment but helpful dollar depreciation; a "crude" gold-buying policy seemingly of little or no purpose but, by its precedent, likely to open "floodgates of potential trouble"; revaluation placing the United States "in the anomalous position of the last firm bulwark of the (modified?) gold standard in the world today"; a Stabilization Fund that its manipulators did not understand, and which could not stabilize until a sterilization program supplied in part its deficiencies; a silver program that proved a tragic farce—all operating under a policy granting the President power to "refashion the monetary system of the country, and the sole criteria required [being] his own subjective evaluations of the situation." Two final chapters on policy formulation and conclusions display a keen insight into the almost insuperable problems attending policy-making in a day when "politics and money are wedded for

sometime to come," and when policies are "a strange blend of financial orthodoxy and radicalism."

A book solely for the interested expert; pontifical here and there; sympathetic, though critical, toward the efforts of the politicos to swim in deep water.

GEORGE H. E. SMITH.

Yale University.

Government of Cities in the United States. By HAROLD ZINK. (New York: The Macmillan Company. 1939. Pp. ix, 636. $3.50.)

This treatise is designed to furnish a survey of contemporary municipal government and administration in the United States. It is useful, therefore, as a basic text for a semester course. The municipal field is treated under seven main parts: Part I: Introduction: The Place of Cities in the United States and the Political and Social Consequences of Urbanization; Part II: The Place of Cities in the Government System of the United States; Part III: Legal Aspects of City Government; Part IV: Municipal Elections and Politics; Part V: The Structure of City Government; Part VI: The Activities of City Government; Part VII: The Problem of Better City Government.

The reviewer decided to try Professor Zink's text prior to writing this review. He has been entirely gratified with his experience. The following features contribute to its value as a guide to undergraduate students: (1) clarity of style; (2) effective organization of the necessarily vast and varied array of materials; (3) emphasis on the intimate relation existing between the organization of the city government and its administration; (4) continual reference to the contemporary American municipal scene; (5) a sensible balance between the actual operation of the American city and proposals for the improvement of municipal processes; (6) accuracy, for the most part, of detail; (7) awareness of current special studies of all phases of city government; (8) a project in municipal measurement to be carried out by students, designed to assist them in determining what kind of government the cities in which they may happen to live possess.

The task confronting Professor Zink in compressing into a single volume of slightly over 600 pages an exposition of all aspects of American city government undoubtedly was puzzling at times. Problems of proportion and emphasis must have presented themselves continuously. That the decision made as each issue arose has been the wisest, the author, it is believed, would be the first to disclaim. Followers of the historical approach to an understanding of the American city will be disappointed, if not shocked, by the absence of any treatment of the development of American municipal institutions. On the other hand, those students who think of the city in terms of the human beings who live in our cities today

will consider that the author has done a particularly effective piece of writing, based on his recognized familiarity with the field, as demonstrated by his treatment of political bosses, the political machine, municipal pressure politics, and the city voter. To those who look upon the city largely in terms of its position as a municipal corporation, the chapters on legal characteristics will appear inadequate and superficial. To others, however, who believe that cities in this country are, in these emergency years, discovering means of developing techniques by which to cut legal shackles and to take refuge especially in federal aid, will find the treatment of grants-in-aid thoroughly satisfactory.

Since the outstanding feature of Professor Zink's treatment of the govment of American cities is its emphasis upon contemporary activities, it is to be expected that the book will be revised frequently, so that it may continue to be contemporaneous.

GEDDES W. RUTHERFORD.

Washington, D. C.

The City; A Study of Urbanism in the United States. By STUART ALFRED QUEEN AND LEWIS FRANCIS THOMAS. (New York and London: McGraw-Hill Book Company, Inc. 1939. Pp. xiii, 500. $4.00.)

City Planning—Why and How. By HAROLD MACLEAN LEWIS. (New York and Toronto: Longmans, Green and Company. 1939. Pp. xxi, 257. $2.50.)

The authors of *The City* have integrated a considerable quantity of sociological and geographical material on urbanism, with their major emphasis, however, on the former discipline. Part I deals with the rise of cities, provides definitions, describes briefly the earliest developments and traces city evolution through medieval times, the industrial revolution, and to the present day. A chapter is devoted to habitats of cities, with emphasis on geographical factors contributing to urban growth. Descriptions of selected cities illustrate the thesis. In Part II, the "culture traits and complexes" which are distinguishing marks of city life are explored. Changes which the family has undergone as a primary institution in our communal life are reviewed. Educational, religious, and political institutions, and those established in cities for leisure-time activities, are reported and their distinctive characteristics and general pattern summarized. There is a chapter on social work and public health in American cities.

The physical pattern and ethnic pattern of metropolitan cities, with much descriptive material drawn from St. Louis, Chicago, New York, and elsewhere, are interestingly described in Part III. This section contains also a chapter on the blighted area in terms of its identifying aspects, in

terms of economic and social drain upon the urban area. Although many urban types are pictured, no exact determination of what constitutes urban as contrasted with rural personality traits can, the authors claim, be exactly expressed. The rapid and complicated changes in cities are reflected in rural life; both evidence far-reaching maladjustments.

With the position taken in the last chapter of the book, that "to devise and carry out comprehensive plans for urban areas would require fundamental changes in our social philosophy" constituting "a cultural mutation of the sort that deserves the name "revolution," the reviewer disagrees. We are steadily getting more planning and better planning under existing institutions, not only in governmental levels but outside them.

The volume contains numerous maps and tables, a considerable portion of which are concerned with the city of St. Louis, where the authors reside; and there is an index.

There has been a need for a compact, accessible volume on recent developments in city planning, such as Mr. Lewis has written. As the author states in the preface, this book is "neither a technical treatise nor a textbook for students of city planning." Although much of the material is applicable to cities of any size, principal emphasis is on the metropolitan city, with its many complications of traffic and transport, its problems of land-use control and population distribution.

The division of the book into two parts, "Why Plan?" and "How Plan?," is advantageous. Part I sketches early planning history (with emphasis on our own), and describes broadly, but in adequate detail, the principal physical functions and the land-use pattern of the city. The circulatory system, including streets, transit, water and sewer lines, work centers and living centers, schools and parks and their interrelationships, is discussed. A graphic picture of the physical city serving the population which resides in and around it is presented.

Part II outlines legislation for planning and procedures and techniques of the planning agency. Chapters are devoted to population studies, planning for highways and transportation, school and recreation plans, civic centers, and savings possible through adhering to a planned program of municipal development.

The planning administrator and technician will encounter little that is unfamiliar, but will find it refreshing that planning method is discussed in clear-cut and readily comprehended terms—an aid to obtaining the public support which has grown measurably for planning, but which is necessary in even greater amount. No doubt, for many students of the social sciences, Mr. Lewis is concerned too strictly with physical planning, and the relation which planning for the municipal unit bears to that for the county, state, region, and nation may appear to have been not sufficiently stressed. But a picture of the contemporary city and the practical

utility of planning for its development and redevelopment proceeds out of his exposition.

The volume is supplied with many well selected illustrations, and there is a brief bibliography.

PAUL OPPERMAN.

American Society of Planning Officials.

Hitler's Germany; The Nazi Background to War. By KARL LOEWENSTEIN. (New York: The Macmillan Company. 1939. Pp. xv, 176. $1.25.)

The New German Empire. By FRANZ BORKENAU (New York: The Viking Press. 1939. Pp. 167. $2.00.)

Amid the ever-growing flood of publications on National Socialism, these two books deserve special attention. The tendency, noticeable in the literature dealing with Hitlerism, to indulge in all sorts of "theories," hypotheses, even prophecies, has, indeed, produced stimulating books such as Hermann Rauschning's *Revolution of Nihilism* and Peter Drucker's *End of the Economic Man.* Such endeavor, however, must be accompanied by the less conspicuous but no less deserving attempt to ascertain the facts, lest we lose the ground upon which to base evaluations and to construct theories.

Of this kind of objective description, Professor Loewenstein's book is an excellent example. So far, no book has been published which contains in so narrow a compass so many—indeed practically all—essential facts concerning the structure of Nazi Germany and the organization of Nazi activities in the various branches of public life. A great deal about the constitution and governmental institutions, the organization of national economy, labor, education, religion, the professions, and an especially brilliant chapter on the party, will be found in this outline, which is all the more impressive by its strict adherence to the sober and cool statement of facts. In this outwardly legalistic approach to the phenomena in question, the author does not deal with Nazi doctrines and ideologies as such; nevertheless he succeeds in making apparent the underlying forces of these dogmas behind legal regulations, technicalities of organization, and details of institutions.

Local administration (the term "local self-government" is no longer suited to the German stiuation) might deserve a special chapter in the section on governmental structure, beyond the brief remarks on p. 79. Indication of the sources of certain references would also be helpful. But these are only minor suggestions. On the whole, the reader finds all of the information which he might expect in a book dealing with structure and institutions.

Loewenstein's book leaves questions of military and foreign policy

aside. That is where Borkenau's book comes in. It is not a history of Nazi foreign policy, which, indeed, has not yet been written. It is a description of the actual, i.e., pre-war, aims and methods of Nazi Germany's expansionism. Taking, one by one, Germany's neighbors and farther fields of Nazi economic and political penetration (including such outlying regions as South Africa and Latin America), the author tries to corroborate his main thesis. This is that the laws which dominate *Wehrwirtschaft* and the inner forces and necessities of a mass-dictatorship which perpetuates itself by terror and propaganda must drive National Socialism into expansion, the direction of which, indeed, changes with circumstances. Its aim, however, i.e., world-domination, and its means (whenever possible, "indirect rule" by revolutionizing the respective countries and establishing dependent régimes), remain constant. Every social, economic, racial, or similar tension, all internal dissensions in the several countries, are exploited by National Socialism for its purposes, regardless of the results for the populations and systems concerned. National Socialism does not fight for the "peasant," or the "proletariat," or "capitalism," but only for the preservation and extension of its own power. Many of the astounding facts concerning Nazi methods of foreign penetration have been noted before, and the summary given here by an acute observer leaves little doubt as to the exactness of the underlying thesis. It is of great importance to realize that National Socialism, as a genuine revolution, cannot preserve its results in Germany save by carrying "revolution" to the world. The French Revolution and Napoleon's policy of hegemony, not Hohenzollern imperialism, is here the right parallel, as far as comparisons are permitted in history. As Borkenau rightly points out, it is always difficult for those living under "normal" conditions to realize fully the meaning of a revolution. To consider National Socialism as only one of the "ever-recurring waves of Teutonic nationalism," or as only one form of "have-not imperialism," might eventually prove to be the "deadly parallel." This time the issue is not so much a new balance of power in Europe as a new balance of human values throughout the entire world.

JOHN H. HERZ.

Institute for Advanced Study,
Princeton, N. J.

The March of Fascism. By STEPHEN RAUSHENBUSH. (New Haven: Yale University Press. 1939. Pp. 355. $3.00.)

With discriminating insight, Mr. Raushenbush sketches in sharp outline the more immediate causes of fascism, emphasizing the fact throughout that, despite significant differences in geography and history, "there is material enough, and to spare, for the making of a purely American fascism today" (p. 2). The rise of fascism, the author submits, "cannot

be explained by accounts of capitalist financing or by the helpful cowardice, blindness, or treason exercised by kings, presidents, or liberal parties. There were real causes for its rise, which lay partly in the inability of nations in Europe to live alone and like it; partly in the failure of the liberal states to bring into the democratic system the non-democratic powers in control of industry and agriculture. The liberal governments had not been able to restore to the individuals the degree of economic freedom they possessed before industrialism and centralized financial control shifted power into a few hands. Fascism was revolutionary in bringing the institutions of private property into subservience to the state, as well as its abolition of individual freedom and its subordination of all its citizens to the one-party state" (pp. 318–319).

Much of the factual material presented here in support of this thesis has been treated more exhaustively elsewhere. The present author's contribution is rather one of interpretation than of description. By suggesting that fascism, of both the German and Italian variety, is the inevitable outgrowth of a degenerate liberalism, and not essentially a peculiarly national or geographical aberration, the author brings into sharp focus the social and economic problems that must be solved if the liberal slogan of "liberty, equality, and fraternity" is to have some reference to actual life. When these liberal concepts become formalized and emptied of all content, the soil is prepared, the author observes, for a fascist movement. "Only a profound conviction and determination to give reality to equality and fraternity as well as liberty," the author submits, "will give us immunity to the values of the totalitarian states . . . " (p. 345).

With convincing argument and analysis, Mr. Raushenbush contends that "the causes for fascism are deeper in the pattern of our life than we usually care to admit" (p. 2). To mention a few of the striking similarities, actual and potential, which he observes between the United States and the formerly democratic nations of Central Europe: We have, as they had, a huge army of unemployed employables and subsistence workers who value economic security above political freedom. With 50,000 farmers losing their farms each year and seven out of ten farms earning less than $1,500 annually, we have an agricultural crisis similar to that experienced by pre-fascist Italy and Germany. Many of our young people in search of security feel, as many of theirs did, a sense of futility and frustration. With increasing concentration of wealth and industrial control by management which tends to be self-perpetuating, our middle class groups, like theirs, are losing their sense of security. Faced with social and economic problems that require national strength, unity, and action for their solution, we are reluctant to convert our traditionally weak, arbitrative, liberal institutions into agencies capable of positive, constructive action. We resort to a therapy that is more ameliorative than corrective. Endeav-

oring to steer a middle course between the Scylla of authoritarianism and the Charybdis of anarchy, we are paralyzed by fear—by a fear that will allow us to go confidently neither forward nor backward. In such a state of inertia, the ground is being prepared, as it was in Germany and Italy, for the acceptance of "fascism by default." In such a state, we are a ready prey for the opportunism of self-styled national "saviors."

As the gulf between democratic theory and practice widens, the pit of fascism yawns more ominously. But it is not enough, the author points out, that we agree upon certain social and economic reforms; for, in the last analysis, "they depend . . . for their permanence upon our rediscovery of a sense of values about life, human personality, and dignity" (p. 345). The author, in short, contends that only by living democratically can we maintain the principles to which we do daily homage in our speech.

JOHN H. HALLOWELL.

University of California at Los Angeles.

The Rise of Integral Nationalism in France, with Special Reference to the Ideas and Activities of Charles Maurras. By WILLIAM CURT BUTHMAN. (New York: Columbia University Press. 1939. Pp. 355. $4.00.)

Americans are often baffled by the party politics of France. Knowing little or nothing about the social factors that are involved, such as the clash of interests and ideologies, of personalities and prejudices, they are apt to seize upon obvious, but superficial, phenomena and relate them erroneously to familiar practice at home. The systematic literature bearing upon French parties does not provide an adequate corrective. Dr. Buthman, however, has illuminated one murky area. He has done so with a thoroughness that reveals not only the outstanding topographical features, but also significant irregularities, so hidden away as commonly to escape observation. The area is a small one, perhaps; but the light that is thrown upon it dispels a good deal of the adjacent obscurity. Incidentally at least, such a detailed study of one political movement must take other movements into consideration and help us to understand, in general, the attitudes of politicians and voters.

Dr. Buthman is concerned with nationalism, or rather with that particular brand of nationalism which has been promoted by *L'Action Française* (a daily since 1908) and the fervent appeals of Charles Maurras. To developments occurring after the outbreak of the World War, he makes few allusions; for the scope of the volume is limited to the rise of integral nationalism. The first seven of twenty chapters deal with the doctrines of Gambetta, Déroulède, Drumont, and Barrès. Their connection with the main theme might have been made clearer. No introductory chapter—not even a paragraph—prepares the reader for the later appearance of Maurras (although he is intended to be the central figure) or

gives any definition of integral nationalism. At last, in the eighth chapter, the elements of this fascist creed are enumerated for the first time: decentralization or "federalism," allowing a large measure of autonomy to communes and reconstituted provinces; hostility to Jews, Protestants, Free Masons, and even residents of alien blood, whether naturalized or not; hostility to parliamentarism, to the rapacious politicians, a group of conquering thieves, who pillage the nation and urge the voters to join them and divide the spoils; and royalism, at which Maurras arrived after eschewing politics altogether in his early years and then supporting General Boulanger.

The attitude of Maurras toward Christianity and the Roman Catholic Church might seem to deserve more than a few scattered passages. No doubt Dr. Buthman would have given more attention to this phase of his subject had his narrative carried down to the 'twenties, when *L'Action Française* was boycotted by the clergy and then, by papal decree, placed upon the Index, along with several of Maurras' books. As a youth, Maurras became an avowed atheist. He felt, we are told, a rigorous need of being without God. Why should an atheist be so well-disposed toward the Catholic Church and welcome it as an ally in the fulfilment of his political program? In his opinion, it was more Roman than Christian; Roman in its attitude toward discipline and public order; closely associated with monarchy; and the chief protector of civilization against the Jewish spirit. Moreover, its interests almost always blended with the interests of France and were in no particular antagonistic to them.

Every student of French institutions will realize the great value of this monograph, all the more because of the accuracy in handling copious materials and because of the richness of detail. One may venture to hope that, in a later volume, Dr. Buthman will follow the fortunes of integral nationalism through the last quarter of a century.

EDWARD M. SAIT.

Pomona College.

The Government and Misgovernment of London. By WILLIAM A. ROBSON. (London: George Allen and Unwin, Ltd. 1939. Pp. 469. 15s.)

Mr. Robson's London is a much larger area than that covered in the recent *History of the London County Council* (see this REVIEW, Vol. 33, p. 1008), and deals with a host of other local authorities, several of which include areas of over 1,800 square miles, with a total population of over 9,000,000—more than double that of the administrative county. It also differs from the *History* (which stressed the accomplishments of the county council, while noting unsolved problems especially for the larger region), in emphasizing the failure to remedy the defects of the confusion and jumble of the medley of more than a hundred existing governmental agencies.

In Part I, the history (since 1835) is traced, dealing with the city corporation, the police district, the metropolitan board of works, the county council, the metropolitan boroughs, and *ad hoc* agencies for water supply, port and river services, highways, traffic, and transport.

Part II deals with present conditions in various fields, such as public health, drainage, food supply, housing, electricity supply, fire protection, education, highways, and finance. The essential need, in Mr. Robson's judgment, is for more comprehensive planning under a regional authority with larger powers than the county council. An account is given of the Royal Commission on London Government (1921), and other special studies, none of which has led to important results.

In Part III, Mr. Robson presents his proposals for a greater London Council, and also a group of secondary councils for areas larger than the present metropolitan boroughs and the districts outside of the present county, and subordinate in matters of policy to the central council.

The final chapter considers the prospects of reform. While recognizing that there will be strong opposition from the vested interests of existing authorities, other factors are noted, especially the dangers of aërial warfare, which may open the way to improvement. In this connection, the work of the New York City Charter Revision Commission of 1934 is cited as an example of successful improvement in municipal government. But Mr. Robson fails to note that this dealt with internal organization of an established area, and did not face the problems of extending the area and absorbing existing minor governments. American experience in this field in recent years seems to have encountered similar obstacles to efforts for the London region. It may be noted also that G. Montague Harris, in his recent work on *Municipal Self-Government in Great Britain*, dealing with ten large urban communities, does not approve proposals for larger regional governments.

Mr. Robson's book, however, is a clear and forceful presentation of the need for far-reaching changes in metropolitan government, and it may lead to substantial improvement, and perhaps aid similar efforts in other places. The text is supplemented by a number of useful diagrams, maps, and plates.

JOHN A. FAIRLIE.

University of Illinois.

International Relations. By BERTRAM W. MAXWELL. (New York: Thomas Y. Crowell Company. 1939. Pp. x, 663. $3.75.)

Professor Maxwell's book divides into three parts, the first one (76 pages) being devoted to aspects of international law and organization, the second (134 pages) to "contemporary world problems," and the third

(401 pages) to international relations proper, i.e., the diplomatic relations between states in the post-World War era. It is this third portion that justifies the title, and which also gives particular merit to the book itself. It is obviously possible to do better justice to "international relations" in 400 pages than it is to "satisfy the examiners" in the treatment of international law and organization and world problems in some 200 pages.

Mr. Maxwell manages to hold the scales fairly even in his interpretation of Versailles and of post-Versailles events. France and Britain come in for their share of blame for the breakdown of the 1930's, but "most of the calamities . . . were not caused by the peace, but were the aftermath of the most disastrous war in history." Although Germany suffered from injustices at Versailles, nevertheless present German policies have roots reaching into the pre-Versailles era. British foreign policy, in the post-war period, dominated, as always, by balance of power considerations, and more recently influenced by "class conscious Tories," has been "detrimental, not only to Britain herself, but to the entire civilized world."

France is the "defeated victor." Her post-war policy has been motivated largely by her fear of Germany's superiority in potential man-power and military strength. Unhappily, "stupid" statesmanship, notably that of Laval and Blum, stultified and aborted France's foreign policy.

Mr. Maxwell is one of that notable group of liberals who regarded Russia as a makeweight for peace and order in the international scene. Writing in the spring of 1939, he may be pardoned for supposing that it was "not likely . . . that . . . the Soviet Union would join with Germany in attacking Poland." He was equally confident that Stalin had surrendered "the idea of world revolution," and that the "Bolshevik state today is no menace to the peace of Europe or the world."

Isolationism for the United States is regarded as a false utopia. Nor can we hope to carry on "business as usual" as a democratic island surrounded by an ocean of dictatorships. A few statements of fact might be open to question. "The American people went into the war for the purpose of saving the world for democracy. . . . " In fact, specific violations of American rights were alleged by President Wilson in his message of April 2, 1917. Question may be raised also as to the alleged contrast between the American idea of neutrality, involving "inherent rights and duties," and "the prevalent concept that a neutral was an enemy." Neutral rights and duties were pretty generally recognized, if not always respected, in the 1914–17 period. One cannot avoid questioning the statement that "the cost of war in human suffering and economic waste, is, and has always been, far greater than the benefits derived from successful warfare. . . . " This has never been proved; nor can we think of an adequate test.

These strictures, however, are perhaps but matters of detail in a gen-

erally competent survey of the international scene down to the late spring of 1939.

G. Bernard Noble.

Reed College.

A Diplomatic History of the American People. By Thomas A. Bailey. (New York: F. S. Crofts and Company. 1940. Pp. xxiv, 806. $4.25.)

Speaking strictly, this is *not* a diplomatic history, but a history of foreign relations imbedded in the living context of national history. As such, it gains immeasurably in value over the arid stereotypes which diplomatic historians have sometimes been disposed to follow. The records of official correspondence and the memoirs of diplomats are, of course, indispensable to the student of international affairs, but their evidence moves on an artificial plane unless it is seen as a part of a total political pattern. In a democracy such as the United States, there is no hard and fast distinction between foreign affairs and domestic politics; the currents of general opinion and the mobilization of group activity with respect to specific issues are forces which show no undue deference for governmental problems having international implications.

Professor Bailey has achieved the difficult task of developing this background of human dynamics and interweaving it with a lively chronicle of diplomatic events. By skilful use of a wealth of contemporary materials —newspapers, diaries, etc., many of which are allowed to speak for themselves through direct quotation—he has injected a vivid, robust quality into these pages, and has thereby revived for our times the atmosphere of public opinion and activity within which statesmen controlling foreign affairs have thought and worked. At the same time, the course of diplomatic negotiations with foreign governments is recounted adequately. But the author has successfully demonstrated that foreign relations derive not only from solemn diplomatic conclaves but from such varied stuff as land hunger, the swagger and bluster of the frontier, the teeming commerce of the seaboard, the frenzy of yellow journalism, the old-world hates of Irish nationalists, a crusading faith in democracy, and the fears of a foreign investor. No recent college textbook on the subject achieves a happier blending of the manifold circumstances attending the development of American foreign relations.

The treatment is chronological rather than topical, and covers events from the beginning of the Republic down to the present day in such a manner as to give an evenly-distributed weight to every period. In this respect, insufficient emphasis is given to the vastly increased volume and importance of transactions in foreign affairs of the past half-century.

So engrossed is Professor Bailey in telling a tale that he too frequently denies the reader the benefits of his own independent analyses and judg-

ments. His conclusions on a diplomatic episode tend to raise questions as to possible interpretations which may be drawn thereon without indicating the nature of his own judgment. Whether or not this is pedagogically sound is open to question. In any event, for an absorbing history of foreign relations in a perspective of public opinion, this volume achieves genuine distinction.

WILLIAM P. MADDOX.

University of Pennsylvania.

International Security. By EDUARD BENEŠ, ARTHUR FEILER, AND RUSHTON COULBORN. (Chicago: University of Chicago Press. 1939. Pp. xi, 152. $2.00.)

From Versailles to Munich, 1918–1938. By BERNADOTTE E. SCHMITT. (Chicago: Public Policy Pamphlet No. 28, University of Chicago Press. 1938. Pp. 57. $0.25.)

These two little books were written at a time when the imminent outbreak of the present European war indicated a convenient point for marking off another segment of history. Each is an anxious inquiry into events since 1918—an inquiry aimed at revealing the mistakes which have culminated in the most tragic of all mistakes, the outbreak of another war. In two lectures, Dr. Eduard Beneš reviews, with an insight which personal experience alone could supply, the efforts from 1919 to 1933 to establish collective security. Collective security, he tells us, is the only basis for peace and for disarmament. The Geneva Protocol of 1924 undertook to give vitality to the diffuse guarantees of the League of Nations. The Locarno Pact went further. It was, says Dr. Beneš, "a real security and peace pact. . . . It was also a just treaty." Yet every effort to establish collective security failed, and after 1933 ceased to be an object of diplomacy. Dr. Beneš does little more than hint at the reasons for the collapse.

In his review of the post-war period, Dr. Arthur Feiler emphasizes the influence of economic factors. He evidently cherishes no hope for international security based upon coöperation between democratic states and ambitious, nationalistic, totalitarian régimes. Economic rivalries are too sharp. Professor Rushton Coulborn's summary of events becomes a slashing attack on Britain for failing to impose upon Europe a Pax Britannica. British himself, he seems not to see that the very power of Britain to impose peace may have been a cause of world restlessness. In British eyes, the worst crime of which the mother country can be guilty is to be less British than she might.

In his *From Versailles to Munich, 1918–1938*, Professor Schmitt opposes the view that traces all of Europe's ills to the Treaty of Versailles. That treaty was less bad than could reasonably have been expected. To

what, then, are European tensions due? The answer is given in this vigorous and skillfully written essay. The national policies pursued by each of the major powers are traced briefly and the impacts of those policies upon domestic and foreign situations indicated. It is an unhappy story of British blundering, French uncertainty, German ruthlessness, and Italian opportunism. It is a story of duplicity and selfishness, economic insecurity, and psychological disturbance.

Both of these books are concise and instructive reviews of a period. They are, however, occupied with the study of the instruments of diplomacy—with incidents. They do not, for the most part, inquire into underlying causes.

HAROLD W. STOKE.

University of Nebraska.

The International Law of John Marshall. By BENJAMIN N. ZIEGLER. (Chapel Hill: University of North Carolina Press. 1939. Pp. xii, 386. $3.50.)

The 195 decisions on questions of international law rendered by the Supreme Court during Marshall's term as Chief Justice, of which eighty-five were written by him, form the subject of this volume. In sum, these decisions constitute a contribution of almost as much importance in their field as Marshall's decisions in constitutional law. His interpretations of the international law both of peace and of war are marked by the same clarity of reasoning and the same catholic choice of means to arrive at a practical solution which characterize his interpretations of the Constitution. Positivist, he sometimes looked to the practice of states when that practice was clear. Naturalist, he sought solutions in principles of natural law when positive law failed. Grotian, he tempered the one with the other when dealing with a problem, such as the slave trade, where natural justice and the practice of states failed to agree. Not a legal scholar himself, he availed himself of the erudition of Justice Story and Sir William Scott, though his interpretations were his own.

He accepted the principle that international law was part of the law of the land, following the Federalist doctrine that it was incorporated in the common law. His interpretations adhered to three main principles. As in constitutional law, he interpreted broadly the sovereign rights of independent states. He firmly upheld the sanctity of the right of private property. When the two conflicted, as when a belligerent attempted to exercise the right to confiscate neutral property at sea, Marshall maintained a broad right of exemption from seizure.

Though insisting on a wide field of authority for the Court, he was conscious of its limits, refusing to pass on political questions such as the recognition of new states and new governments. Even under the unfore-

seen conditions of today, some of his decisions are still as sound as when rendered. In The Schooner *Exchange* v. McFaddon, he gave a breadth of immunity to instrumentalities of a sovereign state which has occasioned much confusion in this day of state-owned or controlled merchant marines and other enterprises. But the author points out that in one of Marshall's little quoted decisions, that of the Bank of the United States v. the Planters Bank of Georgia, the state as merchant loses the immunity it possesses as sovereign. His respect for neutral property rights, however, carried him to the length of granting court protection against confiscation even when the property was found on belligerent armed merchantmen, one of the few cases where he depended on his slender store of book-knowledge in the face of the contrary practice of states.

The tone of the book is in the main highly laudatory, and perhaps pardonably so in the face of the record. Exception might well be taken to the author's interpretation of the present status of international law: "In Marshall's day there existed a real *jus gentium*, a common law of all civilized nations. Today most nations of the world deem themselves entirely too civilized to be bound by any such absurd and ludicrous conception." International law today controls the relations of states quite as well as it did in the time of Napoleon with which Marshall was familiar.

HAROLD J. TOBIN.

Dartmouth College.

Society in Transition. By HARRY ELMER BARNES. (New York: Prentice-Hall, Inc. 1939. Pp. xviii, 999. $5.00.)

The demand for more adequate college training in the social sciences is becoming increasingly audible. This does not mean a demand for more social science courses, but for *a* college social science course. The demand comes from both students and faculty. The former find that the world they live in and the problems of society are not neatly divided into three or more aspects such as sociology, economics, and political science. On the contrary, they find a social world full of problems so complex and so closely interrelated that no one or two of our social sciences is adequate for finding a solution. To face this world, the student seeks a social science that will help him analyze and take hold. But the faculties of many of our different social sciences are also searching for a social science course that will give to students specializing in one discipline a background of the total social structure adequate to permit them realistically to apply their tools of specialization. This new demand in the social sciences cannot be met adequately until materials are available for instruction and until instructors are trained who will be competent to teach these courses.

Professor Barnes has endeavored to provide in one volume a discussion of . . . "the outstanding aspects of this transitional age and to present

and analyze some of its major social problems." He rightly centers his attention upon the great transformations through which our modern culture is passing as a rural folk society is replaced by an urban industrial society. It is the impact of this change upon the individual and upon our social institutions which creates in large measure the problems of the modern age.

From the reviewer's point of view, the study of contemporary society in the perspective of the industrial revolution should be the beginning course to which every student (including the future specialist in political science) is exposed. It provides ideally the basis for intelligent citizenship, as well as for an understanding of the framework in which our contemporary society is rooted. In determining the content of such a course, however, there must be a good deal of difference according to the needs of each college. The course may be simply a problems course in which a selected number of social problems form the subject of discussions; it may be a course intended to provide the student with the elementary tools of social science which he is called upon to apply in his analysis of contemporary society; or it may be simply a course in social history to provide an interpretation of the nature of present-day society. A course using Barnes' book as the sole text would seem to fall into the last category.

Barnes divides his volume into five major sections: "The Historical Background of Our Transitional Age"; "The Physical and Economic Basis of Our Social Problems"; "Leading Socio-Biological Problems in Modern Society"; "The Institutional Impact of Urban Industrial Society"; and "Social Wreckage." Each section gives an analysis of the problems and the social consequences which result, as well as some alternative policies for their solution. A very desirable effort is made to set each problem in its proper historical perspective and to note its effect upon individual well-being and the institutional framework. The division of space given to each of the problems reflects the author's special interest (for example, Barnes gives his chapter on "Leading Economic Problems of Our Day" seventy-one pages, and his chapter on "Some Biological, Social, and Educational Aspects of the Sex Problem" forty-three pages), and raises some very serious questions concerning the relative importance of these problems.

A very serious question arises, too, if this book is to be used as the sole or primary text in a beginning course. In writing the story of modern society, the author is continually presenting opinions and judgments which the student cannot evaluate without an amount of supplementary reading which the size of the text (nearly 1,000 pages) practically precludes in most beginning courses. Dr. Barnes has, of course, recognized this problem when he says in his preface (p. ix): "So critical an age as

that in which we now live is certainly no time for "pussy-footing" or evasion. Unless we are willing to state candidly the situation that faces us, we certainly cannot expect to summon the realism and courage which will be required to solve our problems and perpetuate some semblance of civilization. The sociological obscurantist is today one of the major menaces to civilization. But courage and candor do not necessarily involve intolerance or dogmatism. The writer has tried to keep this book as free from these qualities as from any over-discreet suppression of highly important facts." A cursory glance at any section of this volume will reveal how completely the author has precluded the possibility that he will be included in this class of "major menaces." But the reviewer wonders whether as a consequence this very stimulating volume might not be more suitable as supplementary reading than as the basic text in a beginning course.

Those who are looking for a text in a social science course which is intended to be basic for somewhat advanced work in political science or economics will probably not find this volume satisfactory, since it deals only incidentally with the elements of political organization and economics.

WALTER H. C. LAVES.

University of Chicago.

A Survey of University Graduates in Government Service, 1928–1936. By LLOYD M. SHORT AND GORDON O. PEHRSON. (Minneapolis: University of Minnesota Public Administration Training Center. 1939. Pp. 40.)

During the decade of the thirties, there were several national conferences on university training for government service; and this REVIEW has published a number of observations and proposals on what constitutes the best preparation for public work. In this discussion, however, there had been a dearth of data on what employment government has actually provided for college graduates. Messrs. Short and Pehrson now break through the crust of conjecture and present the statistics on government employment of University of Minnesota graduates; and the study sets an example that should be followed at every university, so that there may be an adequate basis for analysis of the problem of training for the public service.

When presented with nineteen compact statistical tables and forty pages of concisely written text, a reviewer can do little more than pull a few plums out of the pie and refer the reader to the whole of it. The basic data given in the *Survey* (p. 7) include: (1) the number of graduates, men and women, who at some time since graduation have been employed by a governmental agency; (2) the number of graduates employed at each "level of government" (national, state, and local), and the number

employed by educational agencies; (3) the number and proportion of graduates from each of the several schools and colleges who have found government employment; (4) the various departments and types of government service entered by graduates from the several colleges; and (5) the salaries earned by the graduates of the several colleges in each of the classes surveyed.

Many readers will be surprised to know the proportion of Minnesota graduates who went into government service during the nine-year period covered by this study—forty-one per cent of the men and sixty-six per cent of the women (1933 being the peak year). In some of the colleges of the University, reliance on government jobs has been almost exclusive. From the College of Education, eighty-three per cent of the women and seventy-eight per cent of the men graduates went into government service, most of them into teaching. The figures for Agriculture, Forestry, and Home Economics were sixty-five and eighty-four per cent for women and men, respectively. Government service also claimed a third or more of the graduates of Engineering and Architecture, Business Administration, Chemistry, and Medicine, and a fourth of the men graduates in Law. Political scientists will be particularly interested to know that from the College of Science, Arts, and Literature, thirty-one per cent of the men and fifty-five per cent of the women went into government service during the period covered.

Because of limitations of the data available, the authors are not able to give much detail as to the specific type of work performed. They are careful to point out, however, that the field of education is dominant statistically. Almost a third of the Minnesota graduates who went into government service were engaged in teaching, research, and educational administration. Therefore if this field is regarded as government work, the College of Education ranks as the largest source of government personnel; women graduates in public employment outnumber men; and of the three levels, local government is the largest employer, with state government second. If the field of education is excluded from consideration, then forestry, engineering, and the various relief agencies would appear to have been the largest areas of government employment; the Colleges of Agriculture, Forestry, and Home Economics, of Engineering, and of Science, Arts, and Literature, the most important suppliers of government personnel; men graduates in government service can be considered to outnumber women; and the national government rated as the largest employer of college graduates, with the state second.

Professor Short and Mr. Pehrson do not offer much interpretation in their study. But it is easy for the reader to see that political science has played an insignificant rôle so far as government employment is concerned. Even if compared only with other majors in the Arts College who

have gone into public service, political science graduates are vastly outnumbered by library science and sociology students, definitely trail the psychology and English majors, and are on a par with graduates in history and the languages. Whether political science was a supplementary study for those graduates who entered public service is not revealed by the statistics given.

HENRY REINING, JR.

National Institute of Public Affairs.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Edward M. Sait's *American Parties and Elections* (D. Appleton-Century Co., pp. x, 771, $4.00) is a complete revision of a textbook which has a wide following. Its usefulness has been greatly increased by the addition of an interesting introduction and new chapters dealing with "Agrarian Pressure Groups," "Minor Parties," "Campaign Finance," and "Registration." In view of the extensive revision, it is perhaps ungrateful to suggest that reorganization of the material of Part I, "The Electorate and Public Opinion," and Part II, "Nature and History of Parties," would have added much to the effectiveness of the presentation. To get a well-rounded picture of such basic factors of American politics as race, sectionalism, and "big business," one must put together material scattered through a number of chapters. In a volume packed so full of specific information, it would be nothing short of miraculous if some inaccuracies had not crept in. New Mexico, which is listed as one of the convention states (p. 349), passed a mandatory, state-wide direct primary law in 1938. The Massachusetts pre-primary convention law (p. 350) was repealed in 1937. Some will take issue with the statement that it is "reasonable" that trade unions, like business corporations, should be prohibited from contributing to campaign funds (p. 643), and some will wish that the author had drawn more heavily upon Lincoln Steffens in his discussion of the "spoils system." One may quarrel with Professor Sait's organization and emphasis at some points, but the clarity and vividness of his style, the wealth of pertinent illustrative material, and the thoroughness with which he has performed his task should win unanimous approval.—LOUISE OVERACKER.

When previously-published articles, without unity of theme, are to be cast in book-form, the problem of a title becomes one to try man's ingenuity. Solution may be sought, as James Barclay Smith's *Studies in the Adequacy of the Constitution* (Parker and Baird, pp. 356) seeks it, in a drag-net caption. Yet there arises, in such case, the danger that the

pretentious title will dwarf the book; that performance will not meet promise. Such is the pitfall which Mr. Smith's work does not avoid. This is not to say that the subject-matter of the divers articles which compose this book remains without significance to an evaluation of the Constitution's adequacy. Certainly such topics as the limitations upon governmental competition, the national power to destroy child labor by taxation, the proper rate-base in rate-making, the perennial problems of the police power and of the commerce power, the functions of the American administrative tribunal, and the problems of the "full faith and credit" clause—such topics as these remain of great importance to the main question. Nor is there a deficiency of industry behind the book. The prime difficulty remains that furious industry has produced a paucity of results. A confused style, pointless biological metaphors, and a terminology which strives for the esoteric, even as it sometimes misuses the commonplace, do not help the volume forward. But the more fundamental defect is simply that the mass of material remains badly analyzed, poorly or-organized, discursively presented. As the end-result, the several essays gathered into this book seem always to be seeking, with laborious erudition, goals which are never attained. Long ere the reader has completed his weary trek to the back-cover, he will have recalled, by an obvious association of ideas, Ben Franklin's characterization of the Earl of Loudon: "He is like St. George on the tavern-sign—always mounted but never riding on."—JOHN A. SCHROTH.

"Intergovernmental Relations in the United States" (*Annals of the American Academy of Political and Social Science*, Vol. 207, pp. 218, January, 1940, $2.00) is a broad survey of recent developments in this phase of American government. It is especially significant since it represents the first attempt to survey comprehensively a field of which only particular aspects have previously been explored. The study is the work of twenty-six authors, most of whom have, or have had, academic connections; some are also, or have been, connected with governmental agencies or professional organizations in consultant, advisory, or other capacities; one author is a federal official and another is anonymous. The editor, W. Brooke Graves, has arranged the subject-matter under the following divisions, with three or more articles in each: "Federal Relations with Other Units," "Interstate Relations," "Regionalism," "Interrelations of Local Units," and "Some Considerations for the Future." The product of the editorial planning and treatment is a well-rounded symposium on the important aspects of the fields covered. The volume, too, should be of practical utility to prospective thesis writers in that it suggests matters worthy of further exploration. A bibliography on intergovernmental relations is provided also, as well as a list of materials in

previous issues of the *Annals* related to the topics discussed in this issue. In the concluding article, "Readjusting Governmental Areas and Functions," the editor sketches in broad review the more significant current trends in intergovernmental and interjurisdictional relationships in the United States. In view of the tremendous changes now in process, he stresses the need for developing a plan "to guide the course of events in the field of intergovernmental relations in the future." He recommends, as a prerequisite to this plan, the appointment of a national research commission to compile and examine comprehensive basic data pertaining to the whole problem. Such an investigation might throw light on "what the optimal units are for specific governmental purposes" and on "the principles to enable us to determine what they are."—LUELLA GETTYS.

Most of the articles on municipal liability in tort deal solely with the question of the legal extent of such liability. A pamphlet by Leon T. David and John F. Feldmeier on *The Administration of Public Tort Liability in Los Angeles, 1934–38* (Committee on Public Administration, Social Science Research Council, pp. 69, $1.00) presents to the student a case history of such interesting questions as: What kinds of persons sue a city? What are the types of damages claimed, the total amount of claims made against the city, the extent to which these claims are reduced to judgments? The authors believe that a study of this sort "may throw some light on whether tort liability of public agencies is to be extended by statute; it may picture administrative machinery for handling such claims, and effectiveness of such machinery, both for the claimant and the public; it may indicate, to a degree, the relative effectiveness of adjudication of tort claims as against judicial determination." While the authors are modest as to the value of their study, the student of government will readily admit that this work is most instructive in shedding light on all of these points. The pamphlet is replete with interesting facts. On the number of claims filed against the city, the Street Maintenance Division leads with a total of 532, followed in order by the Police Department with 249, Refuse Disposal with 204, and the Public Works Department with 182. The total number of claims filed against the city in a four-year period was 1,444. Valuable tables show the distribution of claims filed by reason of nonfeasance, misfeasance, and malfeasance, the locus of the injury (body, head, back, etc.), claims filed by type of property damage claimed, and the number of claims filed by types of claimant, such as pedestrian user of streets, motor vehicle user of streets, etc. Probably the most interesting statement appears on page 29: "that out of a grand total of 1,429 claims setting forth a total of $7,331,598, only 238 were sued upon for a total of $3,282,135; further, 22 of these suits were dismissed after their initiation without any cost to the city, reducing the amount

sued for by $195,882, leaving a total sued for of $3,086,253. And further, only 26 suits resulted in judgment against the city in the sum of $90,695, upon which the total actually paid was $75,875, because of settlements totalling $14,820 after judgment. The amounts sued for were certainly scaled down after the final conclusion of the suits; indeed, the amount actually paid by the city on the judgments rendered and the settlements after suit totalled $107,343, or approximately 3.3 per cent of the total demanded by the plaintiff." Many readers of this pamphlet will entertain the hope that it will serve as an incentive to similar surveys in other metropolitan areas.—CHARLES C. ROHLFING.

In her *History of the Woman's Peace Movement* (Johns Hopkins Press, pp. 266, $2.50), Marie Louise Degen presents a scholarly study of the struggle of women to attain world peace, principally through the medium of the Woman's Peace Party. This book is of interest chiefly to women. Both chronological and analytical in its approach, the study presents a sympathetic treatment of the efforts of women such as Jane Addams, Carrie Chapman Catt, Rosika Schwimmer, and others, to influence governments as well as public opinion toward peace. The period covered extends from 1914 to 1919, and much space as well as energy is devoted to an analysis of the peace efforts, attitudes, ideals, and martyrdom of Jane Addams. Within the pages of the book, one finds the platform of the Woman's Peace Party and its program for constructive peace, the organization of women for peace on an international scale, and the effort of women to inform statesmen, both in the United States and abroad, of the attitude of women on international peace. The author also discusses the organized opposition of the W.P.P. to militarism in the United States after the sinking of the *Lusitania*, the work of the pacifists in war-time, and, finally, the opposition of the pacifists to the harsh terms of the Armistice. Miss Degen attempts no definite evaluation of the extent of the influence of the pacifist movement, but concludes that undoubtedly the agitation of the W.P.P. (1) influenced to some degree the Scandinavian countries in remaining neutral during the World War; (2) helped crystallize the idealistic American slogan of American participation in the war "to make the world safe for democracy," and (3) presented a specific program which created a public opinion in favor of a League of Nations as a step to an enlightened world order. The study contains a wealth of detail, and is a handbook of the Woman's Peace Movement, written before the present European war.—ELIZABETH WEBER.

The editors of the *Annals of the American Academy of Political and Social Science* present in their issue for November, 1939, a symposium on "Government Expansion in the Economic Sphere" (pp. 170, $2.00).

Most of the writers represented are, as Professor Arthur Coons points out in the foreword, professional economists; and the book may, for that reason, help to destroy the still-current stereotype of the economist as a man who solves all problems regarding the relations between government and business in terms of the Invisible Hand. For the authors of these essays are, like the professional students of politics, rather perplexed than outraged at the scope of the economic functions of modern governments. Indeed, the one hysterical voice of protest is not an economist's at all, but that of the social philosopher Everett Dean Martin, who is no less willing than yesterday and the day before to define politics exclusively in terms of billy-clubs and fire-engines, reserving all things else for private enterprise. The other participants, though ready enough to suppose that democracy and personal liberty would disappear before an indefinite expansion of governmental activity in economic affairs, take the very sensible position that each instance of such expansion must be discussed on its merits; and none of them—Professor Martin excepted—seems to feel that the moment has yet come for crying havoc. Taken as a group, their concern is not with defining the ideal boundary between the political and the economic, but with setting down (as much for their own instruction as for the reader's) the answers to such questions as the following: What is government doing about this economic problem? About that one? About that one yonder? Their ultimate allegiance is, in short, to fact and not to theory; but on this level the book adds little or nothing to the report contained in the current political science textbooks on government and business.—WILLMOORE KENDALL.

Such studies as James K. Pollock's *Voting Behavior; A Case Study* (University of Michigan Press, pp. 40, $0.25) indicate that political scientists are becoming increasingly interested in what might be termed the citizens' branch of government as distinguished from the legislative, judicial, executive, and administrative branches, and that more and more students of government are discovering the essential advantages of statistical methods. Professor Pollock's study is based on an analysis of twenty-six thousand voting records in the city of Ann Arbor, Michigan. These records cover an eight-year period, 1924–1932, and comprise two different registrations and twenty-four different elections and primaries. The analyses deal with city-wide participation, participation by wards, sex, age, nationality and race, faculty status, and voting on issues. The investigator used the technique of sorting by means of Hollerith cards, but limited his interest almost entirely to simple sortings. The information so gained is highly significant. This reader is impressed, however, with the possibility that a few more runs of the sorting machine could quickly have added even greater richness and significance to the body of

findings. Thus by way of comparatively simple sorting, there could have been discovery of the proportions of registrants who voted in one, two, three, and more elections. Occasional voting and absolute non-voting are different phenomena, and might well suggest different diagnoses. Some greater provision for cross-tabulation might have given basis for generalizations upon other important and significant segments of the problem. Finally, it is worth pointing out that Professor Pollock's study affords a sound basis for representative sampling of Ann Arbor citizens. Hence the ground is laid in that community for studies which can deal with the nature and content of the citizens' political and governmental attitudes as well as with their general disposition to vote or refrain from voting.—HERMAN C. BEYLE.

The growing public interest in the control of federal expenditures has recently caused students of public finance to start searching for some of the basic materials on this subject. A noteworthy effort in this direction is Fred W. Powell's *Control of Federal Expenditures; A Documentary History, 1775–1894* (Brookings Institution, pp. x, 928, $5.00). This volume brings together "the significant materials, official and unofficial, underlying the financial history of the United States on the disbursement side, from the beginning to 1894, when the Cockrell-Dockery Act introduced fundamental changes in the system." Many of these materials are not available to anyone at the present time, except those who have access to a few of the principal libraries of the country. Dr. Powell has therefore performed a useful service in compiling some 900 pages of what he believes to be the most revealing and useful of the materials. While it is true that "they constitute an almost continuous record of what was thought, or at least said, by the men who participated in debates on financial and accounting bills, of the facts and arguments presented by legislative committees, and of the results achieved by officials responsible for administering the system which was evolved through a long series of statutes," the record is by no means complete. There are some important gaps, particularly in the criticisms, proposals, and changes which were made shortly after the Civil War. This period needs further exploration. The volume includes proceedings, resolutions, orders, and ordinances of the Continental Congress; speeches and debates in Congress; congressional committee reports; and reports of administrative officers. Occasionally there are excerpts from unofficial papers of men who participated in fiscal legislation or administration. Federal statutes, court decisions, comptroller's decisions, and opinions of attorneys-general are excluded from the volume. Everything in the book has been printed at some time, but is now out of print except the excerpts from the Journals of the Continental Congress and from Hamilton's *Works*.—A. E. BUCK.

Mr. M. G. Toepel's *Assessment of Property for Ad Valorem Tax Purposes in Texas Cities* (University Publications, Austin, Texas, pp. 261, gratis) is another in the series of excellent studies published by the Bureau of Municipal Research of the University of Texas dealing with municipal financial functions. It surveys the general literature on assessing as well as the Texas law and practice. In its chapters appraising the Texas municipal assessment system, the municipality in the assessment process, and the organization of a municipal assessment office, as well as in its detailed analysis of the basic functions of rendition and assessment, exemption, valuation, and review, the Texas situation is compared judiciously with the standards which have been enunciated by authorities, or have come to be recognized nationally as ideal. The worst defects of the Texas system appear to be (1) the discretionary inclusion of certain classes of property and the variation of the ratio of assessed to full valuations according to the need for revenue, (2) excessive reliance upon taxpayer rendition for the basic assessment, and (3) overlapping assessment jurisdictions. The author suggests a program of reform which contemplates mainly a restriction of the tax base, a redefinition of the measure of taxability, a discarding of overlapping assessments (he favors the county assessor plan), and supervision by the state tax board. Specific constitutional and legislative revisions, as well as administrative reforms, are suggested. Educators and assessors generally, as well as Texas assessors, will find in this publication, with its broad scope, practical approach, up-to-date bibliography, and critical appraisal, a valuable textbook and manual.—C. C. Ludwig.

Despite its title, Margaret Grant's *Old-Age Security; Social and Financial Trends* (Committee on Social Security, Social Science Research Council, pp. vii, 261, $2.50) is concerned primarily with the financial problems and trends in the old-age security programs of seven countries. The seven selected for study and analysis are Denmark, New Zealand, Australia, Germany, Czechoslovakia, Sweden, and Great Britain. Due to the wide variations in basic approach to the problem, population, wealth, governmental structure, and administrative experience of these nations, the selection is a wise one. The first two chapters traverse familiar ground. They trace the emergence of special welfare measures for the aged and outline the general characteristics of the two main modes of attack, the old-age pension and the old-age insurance programs. Chapter 3 contains an able and discerning analysis of the contributory insurance plan as it has developed in the last half century; and the latter part of the chapter has an excellent review of trends with reference to benefit formulae. The following chapter on the financing of old-age insurance is exceptionally good. A vast amount of information, drawn from official

reports, interviews, and the reports of the International Labor Office, is ably condensed and clearly presented. The remaining chapters discuss the costs of old-age security with respect to the government's share in total costs, tax revenues, and national income, the effect of population trends on old-age measures, and the bearing of foreign experience on American problems. This last chapter would have gained by the inclusion of more material on administrative costs, and by more attention to social trends. The many charts and tables throughout the book add greatly to its value, the statistical information in them being carefully selected and clearly presented. There is an appendix on the statutory provisions governing the investment of insurance funds; also a good index.—A. N. CHRISTENSEN.

The Advisory Committee on Education, appointed by the President in 1936, has produced not only a report, but also a series of nineteen staff studies on special aspects of the problems which were considered. Katherine A. Frederic's *State Personnel Administration, with Special Reference to Departments of Education* (Government Printing Office, pp. xiv, 270, $0.35) is the third in this series. Miss Frederic seems to have been torn between a duty to write about personnel practices in state departments of education and a desire to cover the whole area of state personnel administration. The result is a monograph which gives a detailed analysis of the personnel policies and staffs of state educational departments and a general picture of the status of personnel work in the states. The sections which purport to reveal conditions in state departments of education furnish more detail than public administrators are likely to use—even those in education. On the other hand, teachers of public administration will probably see in the educational examples an application of general principles. Miss Frederic must realize this, for at several points she gives way to more universal statements (pp. 96, 137). Her observations are accurate and in conformity with sound personnel principles and accepted techniques. It seems unfortunate that the study could not have covered a wider and more significant group of state departments. Miss Frederic is quite capable of performing such a task, and it is to be hoped that she will continue her work. In the meantime, federal and state officials, professors of education, and state and local school officials may, by reading this volume, learn the sound fundamental principles of modern public personnel administration in their application to one functional area of government.—HARVEY WALKER.

National Labor Relations Board Cases (John Wiley and Sons, pp. 120, $1.00), edited by Charles Aikin, is a collection of the important opinions

of the Supreme Court affecting the National Labor Relations Board from the Jones and Laughlin to the Fainblatt case. The book is brief, well planned, and carefully edited. It contains, in addition to the opinions, a statement of the facts of each case, a copy of the Labor Relations Act, and a bibliography. The statement of facts is drawn from the opinions of the Court, the arguments of opposing counsel, and the decisions of the Labor Board. The use of the arguments of counsel is especially valuable, as it makes it possible to draw the issues more sharply. The bibliography is short, but it lists the government documents, books, pamphlets, and articles of most value. Although it contains no analysis or evaluation by the editor—other than through selection and arrangement—*National Labor Relations Board Cases* presents to the reader with imagination a significant and dramatic story. Here is a picture of crucial contacts between labor and industry; here is a record of conflict between a democratically determined public policy and an autocratic industrial society bent upon preserving every last vestige of its power; here is an account of the adaptation of the Constitution to the necessities of our national life; here is to be heard the last rumbling of the judicial minority that drew its political and economic ideas from Mr. Herbert Spencer; here are the stage, the actors, and the action—but for every reader a different play.—E. M. KIRKPATRICK.

While there is little that is new in Dr. John A. Kingsbury's *Health in Handcuffs* (Modern Age Books, pp. ix, 210, $0.75), it nevertheless is a handy little reference volume. The many proposed solutions to the problem of adequate medical care in the United States are the main interest of the author. He has chosen to center his attention on the period between the issuance of the reports of the Committee on the Costs of Medical Care and Mr. (now presidential aspirant) Frank Gannett's strenuous efforts to uphold the Constitution. The first few chapters discuss the now well recognized deficiencies of American medical economics. These are followed by two short chapters, one on the development of health insurance programs abroad, and the other on the general outlines of these plans. This daring condensation relies heavily on the exhaustive studies by Falk, Reed, and others. The real value of the book is in the concluding chapters. They present a well arranged chronicle of recent proposals, legislative and otherwise, and the "pressure politics" involved in the Wagner Health bill. Here, in a few short chapters, one can get a fairly comprehensive picture of the significant steps taken between the report of the Technical Committee on Medical Care (February, 1938) and the Senate hearings and report on the Wagner bill (August, 1939). There is a carefully chosen but not too exhaustive bibliography, and the book is well indexed.—A. N. CHRISTENSEN.

The latest book designed for use in college courses covering the field of government in its relation to economic activity is the revised edition of Ford P. Hall's *Government and Business* (McGraw-Hill Book Co., pp. xii, 455, $4.00). The earlier edition contained some completed chapters and a series of outlined chapters. In the present one, the former chapters have been retained substantially unchanged, and the outlined chapters have been written out in full. In all, twenty-seven chapters are devoted to sundry pieces of legislation purporting to control the conduct of business in its various aspects; and the volume affords a succinct, up-to-date description of the statutory rules in the fields of utilities, banks, securities, food and drugs, coal, anti-monopoly, regulation of competition, insurance, patents, bankruptcy, and public ownership. Some chapters, e.g., that on coal, are too brief to allow adequate discussion. The author has overlooked the changes introduced in the F.D.I.C. and in the Federal Reserve board of governors in the 1935 Banking Act amendments. There is little analysis of the problems which the regulatory agencies face.—CHARLES B. HAGAN.

Public Education in the Territories and Outlying Possessions (U. S. Government Printing Office, pp. xv, 240, $0.35), by Lloyd E. Blauch, is Number 16 of the Staff Studies of the Advisory Committee on Education. It is of distinct value to political scientists, for it concentrates in a compact booklet essential information, not only on educational matters, but also on the social, economic, and political aspects of these widely scattered units of our empire. The brief but illuminating historical résumé for each unit forms an introduction for the analysis of existing conditions, followed by conclusions. The maps, tables, and summaries assist the reader in quick review of pertinent data. The bibliographies reveal the paucity or inaccessibility of literature on these outposts of American civilization. The emphasis is on education—past efforts, present achievements, and future prospects—but the recognition of other governmental and administrative agencies is evident and satisfactory except for some neglect of judicial administration. The general conclusion seems to be that for progress there must be better equipment, better teachers, more centralization, and more outlays of federal funds. The author and his assistants are to be congratulated on producing a very readable and informing report.—GEORGE C. ROBINSON.

Although it has a comprehensive title, *Legal Problems in the Housing Field* (U. S. Government Printing Office, pp. iii, 77, $0.25), this second in the series of housing monographs prepared for the National Resources Committee by technicians in the government serves chiefly as a timely guide to state laws and court decisions related to some phases of public and private housing. Diversity in state laws governing foreclosures,

mechanics' liens, and proof of title suggests the need for uniformity to make federal assistance to private housing ventures as effective as possible. Likewise, problems in the regulation of mortgage financing and property taxation need further consideration. The legal problems of public housing, particularly under the Housing Act of 1937, center in the need for correlating federal and state action. Summaries of legislation and court decisions indicate the trends in the states, and tabulations of provisions of public housing legislation in the states provide material for useful comparisons.—EGBERT S. WENGERT.

In their joint work on *The Government of New Hampshire* (University of New Hampshire, pp. 203), Thomas V. Kalijarvi and William C. Chamberlin present a description of the governmental machinery of their state. The book is based almost entirely on the constitution and laws, except for a few historical sketches. The reviewer found no reference at all to any court interpretations and very little consideration of anything but legal provisions. There is a listing of all the committees of the state legislature, but no discussion of their procedure, control, or activity. There are pages of details concerning the election laws, but no criticism of the length of the ballot. The book seems, therefore, to live up to a statement in the Foreword: "No effort has been made to pass judgment upon the adequacy or inadequacy of any institution. Care has been exercised to avoid controversial issues."—C. I. WINSLOW.

Elliott G. Flowers' *Municipal Officials in Texas* (Univ. of Texas, pp. 179) is one of a series of studies by the Bureau of Municipal Research at the University of Texas. The author describes the qualifications, selection, powers, and functions of officials in the most common offices of Texas municipalities. Most of the materials have been obtained by an exhaustive study of statutes and court decisions, and by interviewing officials in cities and towns selected from various population groups and from different regions of the state. The book should be especially valuable to students of government and to local officials in Texas.—EDWIN O. STENE.

FOREIGN GOVERNMENT AND POLITICS

Although the Weimar Republic is dead, much can be learned from post-mortems such as Frederick Mundell Watkins' illuminating study, *The Failure of Constitutional Emergency Powers under the German Republic* (Harvard University Press, pp. 148, $2.00). Broad emergency authority was incorporated in the constitution of 1919 because that document itself was framed at a time of grave emergency. Moreover, this authority was widely invoked both in the earlier and in the final years of the ill-fated Weimar state; and it contributed to the establishment of the Third Reich.

The emergency powers utilized in the Weimar period were of two main sorts—those exercised under the famous Article 48 and those delegated to the executive through special enabling acts passed by parliament in the form of constitutional amendments. The difficulty of securing the requisite majority for the latter was a leading factor in facilitating the development of Article 48 into an instrument for the destruction of the Republic. Events proved that presidential decrees under Article 48 were perilous substitutes for enabling acts. The author shows that Germany's experience illustrates all the chief weaknesses of present-day emergency arrangements; and from that lesson he draws certain conclusions of general application. Watkins believes that the power of emergency legislation should be delegated to the executive by simple act of the legislature, but under various constitutional restrictions. For example, each single enabling act should be limited to a definitely prescribed maximum period—probably not over three months, with opportunity for concurrent review by parliament or by parliamentary committees. Where parliament is not in session and emergency legislation is necessary, the right of enacting such should be vested in a standing committee of the legislature, as was the case in Czechoslovakia. The problem of providing adequate judicial control over emergency powers is more difficult, especially in European countries; but both legislative and judicial types of control are needed. Dr. Watkins' book, taken as a whole, is a scholarly, interesting, and timely contribution toward the understanding of an important technique of modern constitutional government.—ROGER H. WELLS.

Complaining that most studies of nationalism are either too factual or too theoretical, Eugene Anderson, in his *Nationalism and the Cultural Crisis in Prussia, 1806–1815* (Farrar and Rinehart, pp. ix, 303, $2.50), essays to analyze the subject "in its simplest form." His approach is biographical. Seven persons, contemporaries in the first period of German nationalism, are selected to represent various classes and occupations, and their lives and writings are examined with a view to answering the following questions: "How and under what conditions did individuals make the transition from cosmopolitanism or provincialism into nationalism? What were and are the characteristics of nationalists and of nationalism? Why did nationalism rather than state-ism or some other 'ism' appear?" Four of the individuals chosen, Fichte, Arndt, Kleist, and Gneisenau, though of diverse backgrounds, became exponents of the nationalistic ideal. The other three, Nathusius, Marwitz, and Frederick William III, became exponents either of liberalism or of the *ancien régime*. Fortunately, the author makes no attempt to adduce universal principles concerning the evolution of a nationalist. Very honestly, he confesses that in the end he "does not know why these figures acted with

respect to nationalism as they did." Imponderables in the human equation cannot be reduced to mathematical formulae. However, Mr. Anderson does describe the fact of their reaction to nationalism and explains some of the conditions affecting it. To this extent, the bibliography of nationalism has gained a useful addition. In the reviewer's opinion, the value of the study would have been enhanced by the addition of a brief concluding chapter synthesizing the outstanding materials presented in the separate biographical sketches.—VERNON A. O'ROURKE.

H. Campion, of the University of Manchester, completed in the second half of 1939 a study entitled *Public and Private Property in Great Britain* (Oxford University Press, pp. xvi, 138). In it he defines the three kinds of property whose values he was seeking for certain designated years, the latest being 1936. They are (1) property in private hands (the aggregate value of individual possessions of all persons in Great Britain), (2) total private property (which includes the foregoing plus property belonging to "groups of persons corporately, even though not assignable among them in definite proportions"), and (3) public property (property "held by the state, local authorities, and charities, without deduction of the national debt and loans made to local authorities"). Of particular interest is the discussion of the proper classification of the Central Electricity Board, the London Passenger Transit Board, and the British Broadcasting Corporation, all of which are affected to an unusual degree with a public interest, yet are not in the same category, from a strictly legal point of view, as the Port of London Authority or the Manchester Ship Canal. The author used differing methods to arrive at his conclusions about the value of each of the various classes of property. The outstanding source of information for property in private hands was the estate tax returns, with, of course, adjustments for possessions of individuals whose estates were below £100 and for avoidance of tax liability by means of gifts *inter vivos*, really made in contemplation of death. For the second testings, income from the various types of property mentioned in income tax returns to the Bureau of Inland Revenue was capitalized at certain rates, with adjustments made for some non-money items revealed in the returns. Public property was broken down into its component parts, but was held to exclude the value of roads and armaments (because no satisfactory basis for such measurement has been established) and the values of securities held by local authorities. The information for the study was "complete" for 1932–34, only partially so for 1936. The final chapter contains an analysis of percentage variations between public and private wealth in Great Britain at specified dates. Two real features of this property study are the stimulating introduction written by Professor Jewkes and the remarkably complete index.—JOHN G. HERNDON.

In the past two decades of Mexican history, there has been undertaken the solution of as difficult a set of social, economic, and political problems as has vexed any nation in our times. Nathaniel and Sylvia Weyl, in their *Reconquest of Mexico* (Oxford University Press, pp. 394, $3.00), have made an attempt to evaluate what has been accomplished, in particular by the man who has been president of Mexico for the past six years, Lázaro Cárdenas. Some five chapters of the work are devoted to the personal history of Cárdenas, and the remainder to a topical discussion of the achievements of his administration. Consideration is thus given to the more important aspects of the Mexican scene, such as the position of organized labor, the problem of the church in relation to the state program, the work which has been done in the field of agrarian reform, and the attempts which have been made to organize both producer and consumer coöperatives, the expropriation policy (not only in connection with land and petroleum, but also in regard to such things as transportation), the attempts made to alleviate the appalling evils which exist to menace Mexican health, the development of an educational system, and finally, the elements of the political situation. The very nature of the Mexican revolution leads to partisanship on the part of those who write about it. The authors of *Reconquest of Mexico* are enthusiastic over the work of Cárdenas, and frankly endorse the socialistic program which he backs; by the same token, they condemn its opponents, wherever found. The book is written more for the general reader than for the specialist, and is only sparingly documented. Copious data illuminating the course of recent Mexican politics are made available; and the book will have one particular value in the field: no one who examines it can fail to realize the tremendous complexities of the problems which Cárdenas and other Mexican leaders have been trying to solve, and likewise why in many cases little progress seems to have been made.—DONALD ROWLAND.

Because of the administrative difficulties that might result from the enactment of our Fair Labor Standards Act, Dorothy Sells went to England in the winter of 1937–38 on behalf of the I.L.O. and the United States Bureau of Labor Statistics to ascertain what had been the British experience with similar legislation. In her *British Wages Boards* (Brookings Institution, pp. xv, 389), she has shown how the British wage-fixing machinery works and has outlined what she believes to be the best method of applying the minimum-wage and maximum-hours ideas under a democratic régime. In the first part of her study, Miss Sells traces the development of minimum-wage legislation in England and clearly defines the three types of wage-fixing machinery, giving illustrations of each: the voluntary, the quasi-voluntary, and the statutory. This is followed

by a section dealing with the administration of the minimum-wage laws. Therein she explains how the trade boards are set up and how they function, with a special chapter dealing with the problem of agricultural workers' hours and rates of pay. The trade boards establish differentials according to regions, cost of living, sex, age, and occupation. A trade board has as many members as may be necessary to render it thoroughly representative of the trade. These members comprise representatives of the employers and workers in equal numbers, plus several independent persons known as appointed members. The law requires that at least one woman be an appointed member on every board for a trade in which women are largely employed, and that home-workers be represented on the boards for trades in which a considerable number of home-workers are employed. The British trade boards have been putting a movable ceiling over hours and a moving floor under wages for more than twenty years. They have weathered periods of both falling and rising prices, neglect incident to war, and even threats of abolition. Yet today they are generally accepted as among the most important instruments for social progress ever adopted in the country.—JOHN G. HERNDON.

Professor Chester Lloyd Jones' *Guatemala, Past and Present* (University of Minnesota Press, pp. xii, 420, $5.00) is the best analysis of the political, social, and economic development of Guatemala that has appeared in any language. Based upon thorough research in the published sources as well as upon careful field observations, it is written in a clear and fluent style. It is also amply illustrated with maps, charts, and photographs, and is provided with a good index and a useful bibliography. It may well serve as a model, in most respects, for similar works on other small nations of the Caribbean. As already suggested, the volume consists of three major divisions: Political Development, Economic Advance, and Social Life. Each division begins with the Spanish conquest and ends in 1939. The weakest chapter in the political section is the one dealing with foreign relations. The fourteen pages devoted to that subject are inadequate. Twice the space could have been utilized in setting forth Guatemala's dominance among the states of Central America. The section on economic progress deals with land ownership and distribution, labor, economic activities, public finances and debts, and the various public services. The section on social life adopts a broad definition of that term. It embraces population trends, disease, crime, sanitation, living standards, education, and the general state of morals. Chapters 8, 9, and 24 are of special interest to political scientists. The first two present a description of political practices in a land dominated by dictators. The last attempts to explain the prevalence of the dictators.—J. FRED RIPPY.

Influenced by mounting governmental expenditures, studies of administration tend to become studies of finance. An example is Alfred John Pick's *The Administration of Paris and Montreal* (Montreal: The Witness Press, pp. 201). Major attention is given to problems of revenue, expenditure, and debt. Paris deserves special attention in part because its budget totals approximately half of the combined budget figure for the other 38,013 communes; Montreal, because of a budget equal to that of its province. The announced purpose of the work is a comparative study of administration in the two cities. Comparison is reserved for the last chapter primarily, with six earlier chapters laying the necessary foundation. A few suggestions for reform in Montreal are advanced, and others are implied in the comparisons made. Possibly the study would have an increased value were the proposals for change set forth clearly, rather than being buried in the text. Since the author finds that neither city is a typical municipality in its country, the monograph's major value is for those specifically interested in governmental problems of Paris and Montreal. However, it also contains material of general interest on local government in France and in Canada; and even though the two cities treated occupy a special status, some of their problems are common to all large cities. The study is a worth-while addition to local government literature.—CHRISTIAN L. LARSEN.

Professor Albert H. Imlah's *Lord Ellenborough; A Biography of Edward Law, Earl of Ellenborough, Governor-General of India* (Harvard University Press, pp. xii, 295, $3.50) is a valuable and well written biography which sheds new light on British rule in India a century ago. It is also a very interesting study of a brilliant and conscientious statesman who ruined his career by his genius for tactlessness and his utter inability to enlist popular support. If Lord Ellenborough had been born in 1740 instead of 1790, he would probably be remembered as one of the great figures of the eighteenth century, though the relentless vigor with which he attacked inefficiency and nepotism would scarcely have made him popular. He could and would not adapt himself to the transition from aristocratic rule to middle class democracy in Great Britain. The same lack of political sense cut short his career in India, where he was doing work of the utmost value. He retrieved the disaster of the first Afghan war as far as that was possible, and the administrative and fiscal reforms which he attempted violently outraged the placid self-complacency of the last years of Company rule.—LENNOX A. MILLS.

In a second edition of their *The Background of European Governments* (Farrar and Rinehart, pp. 672, $2.75), Norman L. Hill and Harold W. Stoke provide readings and source materials on the organization, opera-

tion, and problems of the major European governments up to October 15, 1939. The British and French sections contain the greatest variety of source material, including translations by the editors. No such familiarity with the relevant literature is evident in the cases of Germany, Italy, and Russia, where much reliance is placed on translations provided by interested parties. To mention only Germany: *News in Brief* appears as a source eight times and the *Frankfurter Zeitung* once. One misses material intended only for home consumption, of the type provided so well for Great Britain and France. The unique relation of the Nazi party to the state is misunderstood (p. 399). In spite of these defects, the book as a whole is useful and welcome.—JOHN BROWN MASON.

INTERNATIONAL LAW AND RELATIONS

In a small, lucid, non-technical volume, *Warfare; The Relation of War to Society* (Oxford University Press, pp. 276, $2.50), Ludwig Renn (pseudonym for Arnold Vieth von Golssenau) has written his second book on war. An officer in the German army during the World War who later commanded Republican forces in the Spanish war, Renn here presents a simplified historical development of the types and tactics of warfare, primarily for the lay reader. In clear and understandable language, he discusses such fundamentals as the relation of a country's economic basis to its military system and the prosecution of its wars, war costs and the "problem of profitability," differences in outlook between the political and the military branches of the government (especially in Germany and Spain), and the fascist conception of absolute war. The author reviews the changes through the years in the development of war tactics, and is impressed by the "extraordinary tenacity with which outworn forms always persist in military affairs." Basically descriptive of land warfare, the book contains one chapter on strategy and tactics of naval warfare, and another on propaganda. In another short work on warfare, *Ahriman; A Study in Air Bombardment* (World Peace Foundation, pp. xii, 143, $0.50), Brig. Gen. Oliver L. Spaulding, U. S. Army, Retired, reviews the practice of air warfare and makes a plea for the development of moral force and for mutual agreement among states in the development of laws of air warfare. The author outlines the Douhet principle—"that the more violent the war the shorter it will be, and therefore ultimately the less destructive to civilization"—as it develops itself in modern air warfare, and indicates the various basic criticisms of such a theory as applied to the air arm.—IVAN M. STONE.

Dr. David F. Strong's *Austria; October, 1918–March, 1919* (Columbia University Press, pp. 329, $4.00) is a competent, albeit somewhat prolix, narrative of the transition from imperial to republican régime in the

Teutonic remnant of the former Dual Monarchy. The monograph includes an account of the efforts made to provide constitutional and economic foundations for the new Austria, establish a system of administration, fix the republic's frontiers, and develop normal diplomatic relations with other national remnants of the former Habsburg domains and with the victorious Entente powers. The most valuable pages of Dr. Strong's work are those devoted to economic problems. The description of the difficulties encountered in securing even emergency supplies after the armistice and of reëstablishing a system of communication and transport reveal all too graphically the slender prospect of eventual economic stability which the post-war settlement held forth to this most ill-fated of all the succession states. The brief period to which the author has limited his study, and his effort to make his survey comprehensive within that period, occasionally encourage him to encumber his pages with details which, to this reader at least, appear to have merely transitory significance. On the other hand, these very details serve to round out a sort of week-to-week clinical report of the destruction which war government, military defeat, newly released nationalistic aspirations, economic paralysis, and Entente diplomacy wrought upon the pre-war framework of Danubian political and economic collaboration. If peace conferences were in the habit of looking dispassionately at history, they might find reminders in books like Dr. Strong's of what ought to be avoided in order to establish a central European political order which would last more than a generation. The next Versailles and St. Germain might then produce a system of political frontiers somewhat more suited to the Europe of the age of technology and somewhat less reminiscent of a Europe emerging from the feudal age. Monographs like Dr. Strong's also serve to remind us of the excellent use which scholars in our leading graduate schools are making of the documentary and other materials on recent European history made available by the Hoover War Library and the Carnegie Endowment for International Peace.—ARNOLD J. ZURCHER.

The general problems surrounding German colonial aspirations have been examined exhaustively in a number of recent books on the subject, but Granville Roberts in *The Nazi Claim to Colonies* (John Murray, pp. x, 116, 2s. 6d.) gives a new slant to the question by contributing the viewpoint of the British unofficial community settled in East Africa. Associated with the *Mombasa Times*, he writes as a frank British imperialist, and his book is of value primarily in what it reveals as to the frame of mind of the group for which he claims to speak. Although he leaves no doubt as to the fullness of his belief in the whole array of German atrocities, colonial and Nazi, he is pained to see Great Britain wasting her energies in European squabbles at a time when, in his view,

the great potentialities of Empire are being ignorantly neglected and the menace to Empire meets no firm rebuttal in London. "A new British race" is building "a new white Dominion of the Empire," with due regard, of course, for native development within the structure created by the introduction of "virile European settlement and administration," and this grand design leaves no room either for any effective control on the mandate basis or for an international pooling of colonial territories, much less for a return of Tanganyika to Germany. Indeed, Mr. Roberts goes so far as to suggest, quoting local dignitaries, that if Britain should move in the direction of a colonial appeasement, the policy could be carried through only by overcoming the armed resistance of the British colonists. —RUPERT EMERSON.

An unusually interesting and enlightening study of its kind is Mrs. Dorothy Grant Jacquelin's *Swiss-American Economic Relations* (Geneva Research Center, pp. xv, 295, $0.80). The first half of the volume presents a background broader than one would expect. In addition to a consideration of the first reciprocal trade agreement between the two countries (that of 1850), the whole field of friendly relations is explored. The general economy of Switzerland is analyzed. The growth of protectionism in both countries is traced to the abandonment of the first commercial agreement (apparently the only such agreement made by the United States prior to 1922 which contained the unconditional most-favored-nation clause). The latter half of Mrs. Jacquelin's volume gives a comprehensive picture of the Swiss-American trade agreement concluded under Secretary Hull's current program, and analyzes its effect upon the trade of the two countries. To those who want a fair and refreshing picture of the results of one of the trade agreements, this book is to be recommended. It is sympathetic criticism reflecting none of the partisanship so characteristic of most of the current literature on the subject.—JOHN DAY LARKIN.

The *Annals of the American Academy* is too well known, of course, to justify any comment on it as a journal. A word of high commendation is in order, however, about its Vol. 204, "Democracy and the Americans" (American Academy of Political and Social Science, pp. x, 237, $2.00), published in July, 1939. This volume includes the papers read at the forty-third annual meeting of the Academy, March 31–April 1, 1939, and in a supplement, bound with the volume and paged continuously, are included the principal papers read at a conference on "The Lima Conference and the Future of Pan-Americanism" held at the University of Pennsylvania in March, 1939. The main portion of the volume is divided into the sections "Democracy and the Americas," "The Democracies on the Defensive," "The Social Responsibilities of Business,"

and "What Do the Americas Need?" It would be invidious to single out for individual comment any two or three of the twenty-four papers included in the volume. While they naturally vary in individual merit, the volume as a whole is as valuable as it is timely. The Academy has reemphasized its worth-while service with the publication of these papers.—RUSSELL H. FITZGIBBON.

The all-consuming interest of the United States in the acquisition of Cuba constitutes the central theme of the eleventh volume of William R. Manning's *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860.* XI. *Spain.* Documents 5033–5678 (Carnegie Endowment for International Peace, pp. xlii, 1017, $5.00). Throughout the three decades covered, the slavery controversy within the United States found its reflection in American relations with Spain. A succession of American ministers duly reported to the State Department the suspicion with which they were regarded in Madrid and repeatedly blamed British officials and British Abolitionists for their plight. The correspondence includes many dispatches from the consul in Havana, mostly relating to real or supposed filibustering expeditions against the island. Significant are the documents relating to the Lopez expedition, the *Black Warrior* affair, and the Ostend Manifesto. More interesting than the frigid "official" correspondence are a few letters from the *chargé d'affaires* and the secretary of the legation in Madrid relating to the actual mechanics of diplomatic intrigue. The *chargé d'affaires* alleged that the nostrums of the British legation's physician kept Washington Irving ill during important maneuvers at the Spanish court. Such items, breathing more life than the formal correspondence, suggest that the more permanent staff of a legation possesses information superior to that of its transient superiors. Perhaps the Carnegie Endowment and Dr. Manning can be persuaded to follow this series with one on the *Unofficial Correspondence of the United States!*—W. B. HESSELTINE.

In these days, when the world is groping for the road to a lasting peace, it is best not to forget the lessons of history. Many of these lessons are recalled by Sir John A. R. Marriott, who sets forth in his *Commonwealth or Anarchy?* (Columbia University Press, pp. 227, $2.00) the more important projects that have flowed from the brain and pen of man in his attempt to avoid war. From the Pax Romana and the Holy Roman Empire, he sweeps us through the peace plans of Sully, Penn, Rousseau, Kant, and many others down to the post-war era and the League of Nations. The author suggests—in partial answer to the question "Commonwealth or Anarchy?"—that the British Empire might well afford a model for future world organization. Although the book is necessarily

sketchy in places, it is scholarly, interestingly done, and stimulating. Certainly the temper of the times justified its re-publication in 1939.—FRANCIS O. WILCOX.

POLITICAL THEORY AND MISCELLANEOUS

In his *The Early Tudor Theory of Kingship* (Yale University Press, pp. x, 243, $2.50), Franklin Le Van Baumer has made a thorough canvass of the controversial literature on the reign of Henry VIII. The most important part of the book is the material on Church and State, especially Chapter 3, "The King and the Church: The Henrician Pamphlets," which is bound to interest all students of political theory or Tudor kingship. There was in question not merely the relation of the English Church to Rome, but the larger issue of the relation of the Church to the king, or to king and Parliament. Dr. Baumer's discussion of these subjects is competent and interesting. He has not been able to make up his mind as to the evidential value of the pamphlets, many of which were merely *ad hoc* arguments for the royal supremacy; but in any case the conceptions discussed occupy an important place in the history of political thought. On other subjects there was little discussion in the early Tudor period. In Chapter 5, "The King and the Law," Dr. Baumer has gathered together a large number of statements to the effect that positive law is grounded on the law of nature, and from these he infers that the king, and even the king-in-Parliament, was commonly supposed to be limited by a law of nature or reason. A chapter on "The King's Moral Responsibility" is thought to prove the same point, and indeed this negative proposition is the chief characterization of kingship to be found in the book. Certainly the "higher law" doctrine of the Middle Ages was known to all literary men of the sixteenth century, and received the adhesion of most of them; but it is by no means clear that this is a congenial term for explaining their ideas of kingship. Indeed, Dr. Baumer's chapter on the duty of obedience looks in quite another direction. An affirmative description of Tudor kingship is still wanting. But this careful study of the pamphlet literature, and the valuable bibliographies appended, bring that description appreciably nearer.—FRANCIS D. WORMUTH.

As stated by the editor, the object of *Puritanism and Liberty; Being the Army Debates (1647–49) from the Clarke Manuscripts, with Supplementary Documents* (London: J. M. Dent and Sons, Ltd., pp. 506, 18 s.), selected and edited by A. S. Woodhouse, is "to exhibit in certain aspects the political thought of the Puritan Revolution" as centered especially in the Army Debates (the Putney and the Whiteball Debates) from 1647 to 1649 about the constitutional settlement in England. Professor Wood-

house explains the relation of his edition to that of Sir Charles Firth in the Clarke Papers published by the Camden Society in 1891 and 1894, the only previously existing text, "and now long out of print and increasingly difficult to procure." Recording his constant debt to—"for it would be impertinent to praise"—Sir Charles's editorial labors, he believes that the result of his re-study of the manuscripts and of a careful collation of Firth's text with them has resulted in a version which "yields the speaker's sense . . . more readily" than does that text. He prints as Part III of the work certain other selections which he believes have value, not as the sources of the arguments used in the debates, but as "representative analogues" which illustrate "the habits of mind from which the arguments spring." Especial justification for their inclusion rests, he thinks, in the fact that "many of them are available . . . only in the largest or most highly specialized library." We find here, for example, statements from Calvin, Luther, Milton, John Saltmarsh, John Goodwin, William Prynne, Roger Williams, John Lilburne, and others, as well as selections from important pronouncements and documents of the period, bearing on such matters as the law of nature, resistance, Christian liberty, liberty of conscience, and leveller principles in general. In an appendix, the editor has reprinted some other documents referred to in the debates which he considers essential to an understanding of them, along with "some evidence on the religious and political enthusiasms of the New Model, and some material, from the Clarke MSS and other sources, on the activities of the Agitators and the Council of the Army." Many of the documents found in Part III and in the Appendix have not previously been reprinted. The editor's penetrating analysis of the movement known as Puritanism, of the groups into which it was divided—the Presbyterians, the Independents, and the Parties of the Left, including the Levellers and the Fifth Monarchy Men—together with his analysis of the relation of these groups respectively to the parliament, the city, and the army, in which they operated, does much to simplify a complicated problem. More important, however, is his analysis of the Puritan mind as it expressed itself through these various media. The material thus brought together and elucidated is of the highest importance, especially at a moment when the world is struggling with the problem of democracy as never before. The teacher will rejoice in the bringing together of so much valuable and pertinent material between the covers of a single book. The *Debates* themselves furnish most lively and interesting reading, of amazing piquancy at times. Professor A. D. Lindsay's conviction as to their relevancy to our modern discussion on democracy, influencing him to urge Professor Woodhouse to undertake a work here carried far beyond the original conception, is amply justified.—ELLEN DEBORAH ELLIS.

The Godkin Lectures for 1939 are the contribution of Robert Moses, who has entitled them *Theory and Practice in Politics* (Harvard University Press, pp. vi, 78, $1.00). If, as Mr. Moses assumes in the opening statement of his first lecture, he speaks to the universities as one who has gone forth to "battle in the market-places for truth and light," it is unfortunate that he does not more fully summarize the "truths" emerging from his own battles in state and local government. He scatters pontifications with a lavish hand, but they express too largely his personal convictions about international politics, the Supreme Court, the brain trusters, Woodrow Wilson, and the New Deal régime. These cosmic observations may all be true (though they are tossed off with the dogmatic nonchalance of J. Edgar Hoover addressing a Rotary Club); but it is difficult to see how Mr. Moses' governmental experience entitles him to any special competence respecting these matters. He does have some interesting conclusions about civil service, civil liberties, careers for women, labor unions and the public service, New York City's new charter, proportional representation, the city manager system, etc. But even these notions, often expressed as sweeping universals, appear in the lectures to rest upon a meager amalgam of concrete fact and funny story. The thinness of these lectures may signify simply that Mr. Moses has been so busy as a political "actor" that he has not had time to consider deliberately the meaning of his activity.—CHARLES MCKINLEY.

Students of American government and politics will be interested in Carl Wittke's *We Who Built America; The Saga of the Immigrant* (Prentice-Hall, pp. xviii, 547, trade $5.00, school $3.75). A combination of chronological and topical treatment is used. In Part I, the author discusses the colonial period, considering Dutch, French, Welsh, Swedish, Jewish, Irish, and German migrations. Part II deals with what he calls the "old immigration." He includes here Irish, German, Swedish, Norwegian, Icelandic, Finnish, Swiss, Dutch, Russian-German, Welsh, French, and Jewish immigration from 1790 to 1880. There is also a brief consideration of settlements which the author has called "Immigrant Utopias." He concludes this part of the book with a brief analysis of the contributions of various national groups to American artistic, cultural, and scientific achievement. Part III deals with the "new immigration"—Czech, Slovak, Polish, Jugoslav, Russian, Hungarian, Oriental, and other minor migrations. He concludes with a chapter giving a brief but accurate analysis of Native-Americanism in its various forms from early in the nineteenth century. He brings this final chapter to a close with an analysis of the movement toward restriction of immigration—a movement which culminated in the post-war restrictive legislation. No consideration is given English contributions, since he is interested in only the movements

which are not Anglo-Saxon in origin. Of necessity, the book will not satisfy some national groups. Each may feel that his contribution to our country merited more attention than it was given. Disinterested parties will be inclined to feel that the author has held an even hand in assigning the rôle to each national group. Professor Wittke says that his study is exploratory rather than definitive, but that it opens up a large field for historical research. The consideration given to the political importance of the various groups will make the book of interest and value to students of government. Also of interest is the author's discussion of the religious affiliations and institutions of each national group.—ROBERT W. MCCULLOCH.

Publication of Zoltán Magyary's *The Industrial State* (Thomas Nelson and Sons, pp. xi, 203) in English represents a waste of time and money. The volume is a *ragout* of facts well known to every scholar in the field of public administration, seasoned with a determination on the part of the author to prove that a development toward the Führer system is necessary, beneficent, and inevitable. Great masses of familiar material, apparently borrowed without much system from an irreducible minimum of sources, are brought to the support of this thesis. In view of recent events, it is hard to take seriously the solemn argument that "the place of a group in government should be taken once more by an individual leader," and that such a change "is not incompatible either with constitutional democracy or with parliamentarism." The author uses the threadbare device of seeking to show that an increase in the power of the Executive as against that of the Legislative is inevitable: "This has been effected by evolution in Great Britain; in the United States, by the strong executive system. The only question is whether the other states will choose the path of evolution or revolution" (p. 199). There is no need of condemning the book because one disagrees with its point of view. It is worthless on other grounds. Thus it confuses an increase in administrative functions with an increase in executive power; it is almost without documentation; its data are not only commonplace, but incomplete, and are evidently selected for the purpose of supporting predetermined principles. From cover to cover, the volume shows neither originality nor scholarship.—MIRIAM E. OATMAN.

Election is "the process of choosing those who have authority in social organization." It is separate from and prior to all other governmental processes. If it is under unified control, then no distribution of organs or functions, however elaborate, will prevent the actual concentration of power. Proceeding from these ideas, in *The Electional Process and the*

Separation of Powers (Otterbein College, Westerville, Ohio, pp. 49), Dennis DeWitt Brane urges political scientists to give more adequate attention, in their theory of the separation of powers, to the distribution or concentration of "electional control." He examines certain governmental practices to determine the extent to which appointing power is distributed or concentrated. Extra-governmental influences are not dealt with. One would like to see the author's inquiry extended into such matters as the interrelations of economic and governmental personnel and into the common factors which determine both governmental and non-governmental appointments. This would be in line with his broad definition of the election process.—ERIC BEECROFT.

RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLYDE F. SNIDER
University of Illinois

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——— *Special committee on un-American activities.* Investigation of un-American propaganda activities in United States, hearings, 76th Congress, 1st session, on H. Res. 282 . . . v. 6–8, p. 3705–5257. Washington: Govt. Ptg. Off., 1939.
Senate. Education and labor committee. National labor relations act and proposed amendments, hearings, 76th Congress, 1st session, . . . parts 22–23. Washington: Govt. Ptg. Off., 1939.

Federal Housing Administration

Structure and growth of residential neighborhoods in American cities, by Homer Hoyt. Washington: Govt. Ptg. Off., 1939, 178 p. il. 4 overlays. $1.50.

Justice Department

Attorney-General's committee on administrative procedure. Monographs. On February 16, 1939, the President requested the Attorney-General to appoint a committee to investigate the "need for procedural reform in the field of administrative law." "A thorough and comprehensive study should be made, with a view to detecting any existing deficiencies and pointing the way to improvements." Accordingly, on February 24, 1939, such a committee, under the chairmanship of Dean Acheson, was appointed. These monographs are issued by the Committee, under the directorship of Professor Walter Gellhorn, of Columbia University. To date, fourteen in fifteen parts, have been issued in mimeographed form, in a very short edition. Possibly they may later be issued in printed form. These monographs are:

1. The Walsh-Healy act. 1940. 69 p.
2. Veterans' administration. 1940. 129 p.
3. Federal communications commission. 1940. 177 p.
4. United States maritime commission. 1940. 73 p.
5. Federal alcohol administration. 1940. 64 p.
6. Federal trade commission. 1940. 80 p. tables.
7. Administration of the grain standards act. 1940. 50 p.
8. Railroad retirement board. 1940. 100 p.
9. Federal reserve system. 1940. 100 p.
10. Bureau of marine inspection and navigation of Dept. of Commerce. 1940. 73 p.
11. Administration of the packers and stockyards act, the Dept. of Agriculture. 1940. 85 p.
12. National labor relations board. 1940. 90 p.
13. Post Office Department. 1940. 98 p.
14. Federal control of banking. 1940. 103 p.

Nothing so ambitious in the field of administrative procedure has yet been published. See also items under National Archives.

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Rulings and interpretations, no. 2. Washington: Govt. Ptg. Off., 1939. 51 p. (Supersedes no. 1.)

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It will be remembered that on June 19, 1937, the Federal Register Act was amended so as to provide for the publication of a code of federal regulations. For nearly two years, the federal register division has been at work codifying the regulations submitted to them by administrative agencies, and from time to time some have been issued in pamphlet form. Here, for the first time, are the completed titles in bound form. Amendments and additions to this code will appear, in code form, in the *Federal Register*. A glance at the titles listed will give some idea of how inconceivably complicated government has become.

National Labor Relations Board

Division of economic research. List of references on national labor relations board, October 1, 1939. Washington, 1939. 26 p. (mim.)

National Resources Planning Board

Directory of state, territorial, and regional planning agencies. Washington, 1939. 33 p. (mim.)

State Department

International traffic in arms. Laws and regulations. 7th ed. Washington: Govt. Ptg. Off., 1939. 37 p.

STATE AND TERRITORIAL

CALIFORNIA

University of California, Berkeley. Diplomacy and the borderlands; the Adams-Onis treaty of 1819. Berkeley, Univ. of Calif. Press. 1939. 272 p. (Univ. of Calif. Pubs. in History, v. 24.) $2.50.

——— Essays in Pan-Americanism. Berkeley, Univ. of Calif. Press, 1939. 174 p. $2.00.

——— European policies of financing public educational institutions; 5, England and Wales. Berkeley, Univ. of Calif Press., 1939. 295 p. (Univ. of Calif. pubs. in ed., v. 8, no. 5.) $2.50.

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